

W. H. Ireland
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THE
COMMON-WEALTH
OF ENGLAND, AND
MANER OF GOVERNMENT
THEREOF.

Compiled by the honourable Sir *Thomas smith*, Knight,
Doctor of both lawes, and one of the principall Secretaries
vnto two most worthie Princes, King EDVVARD, and
Queene ELIZABETH: With new additions of the chief
Courts in England, the offices thereof, and their seuerall
functions, by the said Authour: Neuer before published.

Seene and allowed,



Lytton

AT LONDON,
Printed by Valentine Simmes, for Gregorie Seton,
and are to be solde at his shoppe vnder
Aldersgate, 1594.



Engraved by Reading, from a Print by Houbraken.

SIR THOMAS SMITH,

SECRETARY OF STATE TO QUEEN ELIZABETH.

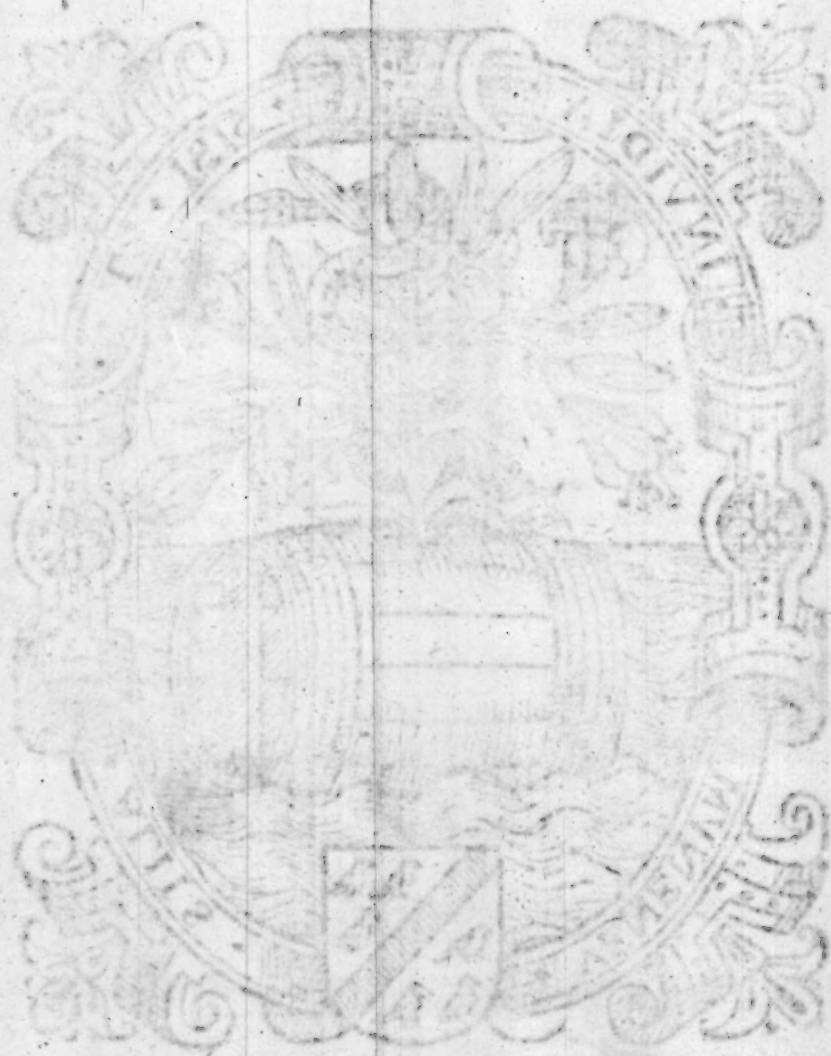
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Compiled by the Honorable Sir Thomas Smith, Knight,
Doctor of both Laws, and one of the principal
advisers to the most Excellent Prince, King Edward VI.
Under the direction of the Honorable Sir Thomas
Cromwell, Lord High Treasurer, and Chancellor
of the Exchequer: Printed before published.

Second Edition.



AT LONDON,
Printed by Valentine Simmes, for Gregorie Seldon,
and are to be sold at his shoppe under
Aldersgate. 1584.

To the Reader.



O conceale the graces inspired by God; or the giftes ingrafted by nature; or the vertues atchieued vnto our selues by industrie, in all ages, and of all wise men was accounted vnderfulnesse, vnkindnes, and impietie vnto that Commonwealth, in the which, and vnto the which we are both bred and borne: but to suppress the worthie workes of anie authour, may iustly be iudged not onely iniurie to the person, but euen enuie at the whole world. V Wherefore, chauncing vppon this short discourse, compiled by the honourable Knight Sir *Thomas Smith*, and considering that the same could not but be a great light vnto the ignorant, and no lesse delight vnto the learned in the lawes and policie of sundrie Regiments: I thought it part of my dutie, as well for reuiuing of the fame of so notable a man, as for the publicke imparting of so pithe a Treatise, to present the same vnto thy indifferent and discrete iudgement. V Wherein although the errors and rashnesse of scribes, appearing in the contrarietie, and corruption of copies, happening both by the length of time since the first making, as also by the often transcribing,

To the Reader.

might iustly haue beene mine excuse, or rather discourage: yet weighing the authoritie of the Author together with the grauitie of the matter, I made no doubt but that the reuerence due vnto the one, and the recompente deserued by the other would easily counteruaile all faults committed by a Clerke and writer. And whereas some termes or other matters may seem to dissent from the vsuall phrase of the common lawes of this Realme: notwithstanding, to him that will consider that the profession of the maker was principally in the ciuill lawes, and therefore not to be expected as one excellent in both, and also that the finishing of this worke was in Fraunce farre from his Library, and in an ambassage, euen in the midst of waightie affaires, it cannot, nor ought not without great ingratitude be displeasing or in any sort disliking. VV herefore (gentle Reader) accept in good part my zeale and this honourable mans trauaile, assuring thy selfe that the same framed by an expert workemaster, and forged of pure and excellent mettall, wil not faile in prouing to bee a right commodious instrument.

Vale.



THE MANER OF GOVERNMENT OR PO- LITIE OF THE REALM OF ENGLAND.

Of the diuersities of Common-
wealths or Government.

CHAPTER I.



They that haue written heretofore
of Common-wealthes, haue
brought them into three most
simple and special kinds or fashi-
ons of government. The first,
where one alone doth gouerne,
is called of the Greeks *Μοναρχία*, the
second, where the smaller num-
ber, commonly called of them *Αριστοκρατία*, and the third
where the multitude doth rule *Δημοκρατία*. To rule, is vn-
derstood to haue the highest & supream authority of cō-
mandement. That part or member of the cōmon-wealth
is said to rule which doth controll, correct, and direct all
other members of the Common-wealth. That part
which doth rule, define and commaund according to the
forme of the government, is taken in euery Common-
wealth to be iust and law: As a rule is alway to be vn-
derstood to be straight, and to which all works be to be

Monarchia.

Aristocratia.

Democratia.

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conformed, and by it to be iudged: I doe not meane the Lesbians rule, which is conformed to the stone: but the right rule whereby the Artificer and the Architect doe iudge the straighnesse of euerie mans worke, hee to be reckoned to make his worke perfectest, who goeth nearest to the straighnesse.

What is iust or law in euery Common-wealth or gouernement.

CHAP. 2.

NOW it both appeare, that it is profitable to euery common-wealth (as it is to euery thing generally and particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule, doe command that which is profitable to it, and the commandement of that part which doth rule on that sort, is to be accepted in euery Common-wealth respectiue to be iust (as we haue said before:) it must needs follow, that the definition which Thrasimachus did make, that to be iust, which is the profite of the ruling and most strong part (if it be meant of the Citie or Common-wealth, is not so farre out of the way, if it be ciuilly vnderstood) as Plato would make it. But as there is profitable, and likelihoode of profite, so there is right and likelihoode of right. And as well may the ruling and soueraigne part command that which is not his profite, as the iust man may offend (notwithstanding his iust and true meaning) when hee would amend that which is amisse, and helpe the Common-wealth, and doe good vnto it. For inasmuch as hee attempteth to doe contrarie to the Lawe which is already put, hee therefore by the law is iustly to be condemned, because his doing is

Iust.

is contrarie to the lawe, and the ordinance of that part which doth commaund.

Another diuision of Common-wealths.

CHAP. 3.

But this matter yet taketh another doubt: for of these manner of rulings by one, by the fewer part, and by the multitude or greater number, they which haue more methodically, and more distinctly and perfectly written vpon them, doe make a subdiuision: and diuiding eche into two, make the one good and iust, and the other euil and vniust: as, where one ruleth, the one they call a king, or βασιλεύς, the other τύραννος, a tyrant: where the fewer number, the one they name a gouerning of best men *δεισκρατία*, or *Remp. optimatum*, the other of the vsurping of a few Gentlemen, or a few of the richer & stronger sort *ὀλιγαρχία* or *Paucorum potestatem*: and where the multitude doth gouerne, the one they call a Common-wealth by the generall name *πολιτεία*, or the rule of the people *δημοκρατία*, the other, the rule or the vsurping of the popular, or rascall and viler sort, because they be mo in number, *δημοκρατία ἐπὶ πονηρῶν*.

Examples of changes in the maner of Gouernment.

CHAP. 4.

In Common-wealthes which haue had long continuance, the diuersities of times haue made all these manners of ruling or gouernment to be seene: As in Rome, kings, Romulus, Numa, Seruius: tyrants, Tarquinius, Sylla, Caesar: the rule of best men, as in time when the first Consuls were: and the vsurping of a few, as of the Senators after the death of Tarquinius, and before the

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Succession of the Tribunate, and manifestly in the Decemvirate, but more perniciously in the Triumvirate of Cæsar, Crassus, and Pompeius : and afterward in the Triumvirate of Octavius, Antonius, and Lepidus : The common-wealth and rule of the people, as in the expul-
sing of the Decemviri, and long after, especially after
y^e law was made, either by Horatius, or (as some would
haue it) Hortentius, *quod plebs sciuerit, id populum teneat* :
And the ruling and vsurping of the popular and rascall,
as a little befoze Sylla his reigne, & a little befoze Caius
Cæsars reigne. For the vsurping of y^e rascalitie can ne-
uer long indure, but necessarily breedeth, & quickly bring-
geth forth a tyrant. Of this hath Athens, Syracuse, La-
cedemon, and other old ancient ruling Cities had expe-
rience, and a man neede not doubt but that other com-
mon-wealths haue followed the same rate. For the na-
ture of man is neuer to stand still in one maner of estate,
but to grow from the lesse to the more, and decay from
the more againe to the lesse, till it come to the fatal end
and destruction, with many turns and turneoys of sick-
nesse, and recouering, seldome standing in a perfect
health neither of a mans body it selfe, nor of the poli-
ticke body which is compact of the same.

Of the question what is right and iust in
in euery common-wealth.

CHAP. 5.

SO when the common-wealth is euill gouerned by an
euill ruler and vniust (as in the thre last named
which be rather a sickness of the politick body, then per-
fect and good estates) if the lawes be made, as most like
they be alwayes to maintaine that estate: the question
remaineth, whether the obedience of them be iust, and
the

the disobedience wrong: the profite and conseruation of that estate right and iustice, or the dissolution: and whether a good and vpight man, and louer of his countrey ought to maintaine and obey them, or to seeke by all meanes to abolish them: which great and haughty courages haue often attempted: as Dion to rise vp against Dyonisius, Thrasibulus against the xxx. tyrants, Brutus and Cassius, against Cæsar, which hath bin cause of many commotions in common-wealths, whereof y iudgement of the common people is according to the euent and successe: of them which be learned, according to the purpose of the doers, and the estate of the time then present. Certain it is that it is alwaies a doubtfull and hazardous matter to meddle with the changing of the lawes and gouernement, or to disobey the orders of the rule or gouernment, which a man doth finde alreadie established.

That common-wealths or gouernements

are not most commonly simple, but mixt.

CHAP. 6.

Now although the gouernments of common-wealths be thus deuided into thre, and cutting eche into two, so into sixe: yet you must not take, that yee shall finde any common-wealth or gouernment simple, pure and absolute in his sort and kind, but as wise men haue deuided for vnderstandings sake, & fantasied foure simple bodies which they call elementes: as fire, ayre, water, earth, and in a mans bodie foure complexions or temperatures, as cholericke, sanguine, phlegmaticque, and melancholicke: not that yee shall finde one vtterly perfect without mixture of the other, for that nature almost will not suffer: but vnderstanding doth discern

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ech nature as in his sinceritie : so seldome or neuer shall you find common-wealths or government, which is absolutely and sincerely made of any of them aboue named, but alwayes mixed with another, & hath the name of that which is moze, and ouerruleth the other alwaies or for the most part.

The definition of a king and of a tyrant.

CHAP. 7.

Rex.

Tyrannus.

VWhere one person beareth the rule, they define that to be the state of a king, who by succession or election, cometh with the good wil of the people, to that government, and doth administer the Common-wealth by the lawes of the same, and by equitie, & doth seeke the profite of the people as much as his own. A tyrant they name him, who by force cometh to the monarchy against the wil of the people, breaketh lawes already made, at his pleasure, maketh other without the aduise and consent of the people, and regardeth not the wealth of his Commons, but his aduancement of himself, his faction and kindred. These definitions doe containe three differences : the obtaining of the authoritie, the manner of administration thereof, & the butte or marke wherunto it doth tend and shewe. So as one may be a tyrant by his entry and getting of the government, and a king in the administration thereof. As a man may thinke of Octavius, and peradventure of Sylla. For they both coming by tyranny and violence to that state, did seeme to trauaile verie much for the better order of the common-wealth : howbeit, either of them after a diuers manner. Another may be a king by entry, & a tyrant by administration, as Nero, Domitian, and Commodus : for the Empire came to them by succession, but their administration

nistraton was vtterly tyzannicall, of Nero after five yeares, of Domitian and Commodus very shortly vpon their new honoꝝ. Some both in the comming to their Empire, and in the butte which they shoot at, be kings, but the maner of their ruling is tyzannicall: as many Emperours after Cæsar and Octavius, and many Popes of Rome. The Emperours claime this tyzannicall power by pꝛefence of that Rogation or *Plebiscitum*, which Caius Cæsar, or Octavius obtained, by which all the people of Rome did conferre their power and authoritie vnto Cæsar wholly.

The Pope groundeth his from Christ (*cui omnes potestas data est in celo & in terra*) whose successor he pꝛetendeth to be: yet the generall Councils make strife with him, to make the popes power either *Aristocratican*, or at the least *legitimum regnum*, and would faine bꝛidle *absolutam potestatem*. Some men do iudge the same of the Kinges of Fraunce and certaine Princes of Italie and other places, because they make and abrogate laws and edicts, lay on tributes and impositions of their owne will, or by the pꝛinate counsell & aduise of their friends and fauourers onely, without the consent of the people. The people I call that which the worde *Populus* doeth signifie, the whole body, and the thꝛee estates of the common-wealth: and they blame Lewes the xi. for bꝛinging the administration royall of Fraunce, from the lawfull and regulate raigne, to the absolute and tyzannicall power and gouernment. He himselſe was woont to glory and say, he had brought the crowne of Fraunce, hors de page, as one would say, out of wardship.

Of the absolute king.

CHAP. 8.

Other doe call that kinde of administration which the Greeks doe call *παρβασιλείαν*, not tyzannie, but the absolute

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absolute power of a king, which they would pretend that euerie king hath, if he would vse the same. The other they call βασιλεία ῥημικὴ or the royall power, regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessarie: so in time of peace the same is verie dangerous, as well to him that doth vse it, and much moze to the people vpon whom it is vled: whereof the cause is the frailtie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontrolled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who would not suffer any man to keepe the Dictatorship aboue sixe moneths, because the Dictators (for that time) had this absolute power, which some Greekes named a lawfull tyzanny for a time. As I remember, Aristotle, (who of all wryters hath most absolutely & methodically treated of the diuision and natures of common-wealthes) maketh this sort of gouernment to be one kinde of kings. But all commeth to one effect: for at the first all kings ruled absolutely, as they who were either the heads and most ancient of their families, deriued out of their own bodies, as Adam, Noa, Abraham, Iacob, Esau, reigning absolutely ouer their owne children and bondmen, as reason was: or else in the rude world amongst barbarous & ignorant people, some one then whom God had endued with singular wisdom to inuent thinges necessary for the nourishing and defence of the multitude, and to administer iustice, did so farre excell other, that all the rest were but beastes in comparison of him: and for that excellencie willingly had this authoritie giuen him of the multitude, and of the Gentiles when he was dead, and almost when he was yet liuing, was taken for

a God, of others for a Prophet. Such among the Jewes were Moses, Iosua, and the other Judges, as Samuel, &c. Romulus and Numa amongst the Romanes, Lycurgus and Solon and diuers other among the Grækes, Zamolxis among the Thracians, Mahomet among the Arabians: And this kinde of rule among the Grækes is called *τύραννις* which of it selfe at the first was not a name odious: But because they who had such rule, at the first, did for the most part abuse the same, waxed insolent and proud, vniust and not regarding the common-wealth, committed such acts as were horrible and odious: as, killing men without cause, abusing their wives & daughters, taking and spoiling all mens goods at their pleasures, and were not shepheards as they ought to be, but rather robbers and deuourers of the people. Whereof some were contemners of God, as Dyonisius, otherwhile they liued like diuels, & would yet be adozed & accounted for Gods: as Caius Caligula, and Domitian: that kind of administration, and maner also, at the first not euill, hath taken the signification & definition of the vice of the abusers, so that now both in Græke, Latine, and English, a tyrant is counted he, who is an euil king, and who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe and his, and to satisfie his vicious and cruel appetite, without respect of God, of right, or of the law: because that for the most part, they who haue had that absolute power, haue been such.

Of the name of king, and the administration of England.

CHAP. 9.

That which we call in one syllable king in English, the old Englishmen, and the Saxons, from whom our tongue

tongue is deriued, to this day call in two sillables, cying, which whether it cometh of cen or ken, which betokeneth to know and vnderstand, or can, which betokeneth to be able, or to haue power, I cannot tel. The participle absolute of the one we vse yet, as when we say, a cunning man, *Vir prudens, aut sciens*: the verbe of the other, as I can doe this, *possum hoc facere*. By olde and ancient histories that I haue read, I do not vnderstand that our nation hath vsed any other generall authoritie in this realme neither *Aristocraticall*, nor *Democraticall*, but onely the royall and kingly maiestie which at the first was diuided into many and sundry kinges, ech absolutely reigning in his countrey, not vnder any subiection of other, till by fighting the one with the other, the ouercommed alwaies falling to the augmentation of the vanquisher and ouercommer: at the last the realme of England grew into one Monarchie. Neither any one of those kings, neither he who first had all, tooke any inuestiture at the hands of the Emperour of Rome, or of any other superiour or foraine Prince, but held of God to himselfe, and by his sworde, his people and crowne, acknowledging no prince in earth his superiour, and so it is kept and holden at this day. Although king Iohn (by the rebellion of the Nobilitie, ayded with the Dauphin of Fraunce his power) to appease the Pope, who at that time possessing the consciences of his subiectes, was then also his enemy, and his most greuous torment (as some histories doe witnesse) did resigne the crowne to his Legate Pandulphus, and tooke it againe from him, as from the Pope, by faith and homage, and a certain tribute yeerly. But that act being neither approved by his people, nor established by act of Parliament, was forthwith, and ever sithens taken for nothing, either to binde the king, his successors or subiectes.

What

V What is a Common-wealth, and the

partes thereof.

CHAP. IO.

TO be better vnderstood hereafter, it is necessary yet *Respublica.*
to make a third diuision of the Common-wealth by
the partes thereof. A Common-wealth is called a socie-
tie or common doing of a multitude of free men, collec-
ted together, and vnitied by common accord & couenants
among themselves, for the conseruation of themselves
as wel in peace as in war. For properly an host of men
is not called a common-wealth, but abusiuely, because
they are collected but for a time, and for a fact: which
done, ech deuideth himsele from others as they were
before. And if one man had, as some of the old Romans
had (if it be true that is written) fise thousand, or tenne
thousand bondmen whom hee ruled well, though they
dwelled all in one citie, or were distributed into diuers
billages, yet that were no commo-wealth: for the bond-
man hath no communion with his maister, the wealth
of the Lord is onely sought for, and not the profite of the
saue or bondman. For as they who write of these
things haue defined, a bondman or saue as it were (sa-
uing life and humane reason) but the instrument of his
Lord, as the axe, the sawe, the cheill and gowge is of
the Carpenter. Trueth it is, the Carpenter looketh di-
ligently to saue, correct and amend all these: but it is
for his owne profite, and in consideration of himself, not
for the instruments sake. And as these be instruments
of the Carpenter, so the plow, the cart, the horse, ore, or
asse, be instruments of the husbandman: and though
one husbandman had a great number of all these, and
looked well to them, it made no commonwealth, nor
could not so be called. For y private wealth of the hus-

bandman is onely regarded, and there is no mutuall societie or portion, no law or pleading between the one and the other. And (as hee saith) what reason hath the pot to say to the Potter, why madest thou me thus? or why doest thou bzeak me after thou hast made me: euen so is the bondman or slaue which is bought for money: for he is but a reasonable & living instrument, the possession of his lord and maister, reckoned among his goodes, not otherwise admitted to the societie ciuill, or Commonwealth, but is part of the possession and goods of his lord. Wherefore, except there be other orders and administrations amongst the Turkes, if the prince of the Turkes (as it is written of him) doe repute all other his bondmen and slaues (himselfe and his sonnes onely freemen) a man may doubt whether his administration be to be accounted a common-wealth, or a kingdom, or he rather to be reputed onely as one that hath vnder him an infinite number of slaues or bondmen, among whom there is no right, law, nor commonwealth compact, but onely the will of the lord and seignior. Surely none of the old Greekes would call this fashion of gouernement, *Remp.* or πολιτεία for the reasons which I haue declared before.

The first sort, or beginning of an house

or Familie, called *οικονομία*.

CHAP. II.

Then if this be a societie, and consisteth onely of freemen, the least part thereof must be of two. The naturallest, and first coniunction of two, toward the making of a further societie of continuance, is of the husband & of the wife, after a diuers sort, each hauing care of the familie the man to get, to trauaile abroad, to defend: the

the wife, to saue that which is gotten, to carry at home,
to distribute that which commeth of the husbands laboꝝ,
foꝝ the nurtriture of the childe, and family of them
both, and to keepe all at home neate, and cleane. So na-
ture hath forged eche part to his office: the man sterne,
strong, bold, aduenturous, negligent of his beautie, and
spending. The woman weake, fearefull, faire, curious
of her beautie, and sauing. Either of them excelling o-
ther in witte and wisdom, to conduct those thinges
which appertain to their office, and therefore where
their wisdom doth excell, therein it is reason that ech
should gouerne. And without this societie of man and
woman, the kinde of man could not long endure. And
to this societie men are so naturally borne, that the
Prince of all philosophers, in consideration of natures,
was not afraid to say, that a man by nature is rather
desirous to fellow himselfe to another, and so to line in
couple, than to adhere himselfe with manie. Although
of all things, oꝝ living creatures, a man doth shew him-
selfe most politicke, yet can he not wel line without the
societie & fellowship ciuill. He that can line alone, saith
Aristotle is either a wilde beast in a mans likenes, oꝝ
els a God rather than a man. So in the house & familie
is the first and most naturall (but priuate) apparance of
one of the best kindes of a common-wealth, that is cal-
led Aristocratie, where a few, and the best doe govern,
and where not one alwaies: but sometime, and in some
thing one, and sometime and in some thing another doth
beare the rule. Which to maintaine foꝝ his part, God
hath giuen to the man great witte, bigger strength, and
moze courage, to compell the woman to obey by reason,
oꝝ foꝝce: and to the woman beautie, faire countenance,
and swete woꝝdes, to make the man to obey her again
foꝝ loue. Thus ech obeieith and commandeth other, and
they two together ruleth the house. The house I cal here

Domus, seu
familia,

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the man, the woman, their childzen, their seruantes bond and free, their cattle, their household stuffe, and all other things which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called Aristocratie, but Metaphorice, for it is but an house, and a little sparke resembling as it were that gouernment.

The first and naturall beginning of a king-

done in Greeke βασιλεία.

CHAP. 12.

Prouining,
or propaga-
tion, is when
a man layeth
a branch of
a Vine or O-
ler, or any
other tree
into the
ground, so
that it taketh
root of it
self, and may
liue though
it be cut
cleane from
the first root
or stocke.
Pagus.
Oppidum.
Ciuitas.
Regnum.

BUT for so much as it is the nature of all thinges to encrease or decrease in this house thus increasing and multiplying by generation, so that it cannot well bee comprehended in one habitation, and the childzen waxing bigger, stronger, wiser, & therupon naturally desirous to rule, the father and mother sendeth them out in couples as it were by prouining or propagation. And the child by marriage beginneth as it were to roote towards the making of a new stocke, and thereupon another house or family. So by this propagation or prouining first of one, and then another, and so from one to another, in space of time, of many houses was made a street or village, of many streets and villages ioyned together, a Citie or Borough. And when many citie, boroughs and villages, were by common and mutuall consent for their conseruation ruled by that one and first father of them all, it was called a nation or kingdome. And this semeth the first and most naturall beginning and source of citie, to wnes, nations, kingdomes, and of all ciuill societies. For so long as the great grandfather was aliue and able to rule, it was vnaturall for anie of his sonnes or offspring to strue with him for the su-
perio-

perioztie, or to go about to gouerne, or any wise to dishonour him, from whom hee had receiued life and being. And therefore such a one doth beare the first and natural example of an absolute and perfect king. For he loued them as his owne children and nephewes, cared for them as members of his owne bodie, provided for them as one hauing by long time more experience then any one, or all of them. They againe honoured him as their father of whose body they came, obeyed him for his great wisdom and foresight, went to him in doubtful cases as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe bled noziture: for ech paine put vpon them, he esteemed as layd vpon himselfe.

The first and natural beginning of the rule of a
few of the best men, called in Greeke *Agētopoiā*,

CHAP. 13.

BUT when that great Graundfather was dead, the sonnes of him, and brethren among themselves, not hauing that reuerence to any, nor confidence of wisdom in any one of them, nor that trust the one to the other, betwixt whom (as many times it fareth with brethren) some strifes and brawlings had before arisen: To defend themselves yet from them which were Walsh and strangers, necessarily agreed among themselves to consult in common, and to beare rule for a time in order, now one, now another; so that no one might beare always the rule, nor any one be neglected. And by this meanes, if any one failed during his yeere or time by ignorance, the next (being either wiser of himselfe, or els by his brothers error and fault) amended it. And in the meane while, at diuerse most times
when

When urgent necessitie did occurre, they consulted all those heades of families together within themselves, how to demean and order their matters best for the conseruation of themselves, and eche of their families generally and particularly. Thus a few, being heads, and the chiefe of their families, equall in birth and nobilitie, and not much different in riches, gouerned their owne houses, and the descendents of them particularly, and consulted in common vpon publicke causes, agreeing also vpon certaine lawes and orders to be kept amongst them. So the best, chiefeest, and sageest did rule, and the other part had no cause to strue with them, nor had no cause nor apparance to compare with anie of them, neither for age nor discretion, nor for riches or nobilitie. The rulers sought ech to keepe and maintain their posteritie, as their sonnes and nephewes, and such as should succede them, and carrie their names when they were dead, and so render them being mortall by nature, immortall by their fame and succession of posteritie: hauing most earnest care to maintain stil this their cousinage and common familie aswell against foraine and barbarous nations, which were not of their progenie, tongue, or religion, as against wilde and sauage beasts. This seemeth the naturall source, and beginning or image of that rule of the fewer number, which is called of the Greeks *κλεινταία*, and of the Latines *optimatum respublica*.

The first originall, or beginning of the rule

of the multitude called *πολιτεία* or *δημοκρατία*.

CHAP. 14.

NOW, as time bringeth an end of all thinges, these brethren being all dead, and their offspring increasing

sing dayly to a great multitude, and the reuerence due to the old fathers in such and so great number of equals sayling by the reason of the death or dotting of the Elders: eche owing their merites of education apart to their Fathers and Grandfathers, and so many arising, and such equalities among them, it was not possible that they should be content to be gouerned by a few. For two things being such as for the which men in societie and league doe most stride, that is, honoꝝ and profit, no man of free courage can be contented to be neglected therein, so that they were faine of necessitie to come to that, that the more part should beare the price alway in election of Magistrates and Rulers. So that either by course or by lot ech man in turne might be receiued to beare rule, and haue his part of the honoꝝ: and (if anie were) of the profite which came by administration of the common-wealth. For whosoever came of that olde great Grandfathers race, he accounted himselfe as good of birth as any other. For seruice to the commonwelth, all, or such a number had done it, as they coulde not be accounted few. And if a few would take vpon them to vsurpe ouer the rest, the rest conspiring together would soone be maisters of them, and ruinate them wholly. Whereupon necessarily it came to passe, that the common-wealth must turne and alter as befoze from one to a few, so now from a few, to many and the most part, ech of these yet willing to saue the politicke bodie, to conserue the authoritie of their nation, to defend themselves against all other, their strife being onely for empire and rule, and who should do best for the common-wealth, whereof they woulde haue experience made by bearing office and being magistrates. This I take for the first and naturall beginning of the rule of the multitude which the Greekes called *δημοκρατία*: the Latines some *Respublica* by the generall name, some *populi*

puli potestas, some sensus potestas, I cannot tell howe latine.

That the common-wealth or policie must be according to the nature of the people.

CHAP. 15.

By this processe and discourse it doth appeare that the mutations & changes of fashions of gouernement in commonwealths be naturall, & doe not alwaies come of ambition or malice. And that according to the nature of the people, so the commonwealth is to it fit and proper. And as all these 14. kindes of commonwealths are naturall, so when to ech partie or espeece and kinde of the people that is applied which best agreeth, like a garment to the bodie or shoe to the foote, then the body politike is in quiet, & findeth ease, pleasure and profite. But if a contrarie forme be giuen to a contrary manner of people, as when the shoe is too litle or too great for the foot, it both hurt and encomber the convenient vse thereof, so the free people of nature tyrannized or ruled by one against their wils, were he neuer so good, either faile of courage and were feeble, or neuer rest untill they either destroy the king and them that would subdue them, or be destroyed themselves. And againe, another sort there is, which without being ruled by one prince, but set at libertie cannot tell what they should doe, but either through insolencie, pride, and idlenesse, will fall to roberie and all mischiefe, and to scatter and dissolue themselves, or with foolish ambition and priuate strife consume one another, and bring themselves to nothing. Of both these two wee haue histories in how to beare witness, as the Greekes, Romanes, Samnites, Danes, Vandalles, and others. Yet must you not think that all

common

Græci.
Romani.
Samnits.
Vandali.
Dani.
Norwegi.
Sueti.

common-wealths, administrations and rulings, began on this sort, by prouining or propagation, as is before written: but manie times after a great bat taile & long warre, the Captaine who led a multitude of people, gathered peraduenture of diuers nations and languages, liking the place which he hath by force rōquered, tarieth there, and beginneth a cōmon-wealth after this maner, and for y most part a kingdome. As the Gothes & Lumbards in Italie, the Frenchmē in Gaule, the Sarasins in Spaine and part of France, y Saxons in great Britaine, which is now called England: of which, whē that one and chiefe Prince is dead, the nobler sort consult among theselues, and either chōse an other head & king, or diuide it into more heads and rulers, so did the Lumbards in Italy, and the Saxons in England: or take at the first a common rule & popular estate, as the Zwisers did in their cantons, and doe yet at this day, or els admit the rule of a certaine fewe, excluding the multitude and communalitie, as the Paduans, Cleronenses, and Venetians haue accustomed.

The diuision of the parts and persons of the Common-wealth.

CHAP. 16.

TO make all things yet clere before, as we shall goe, there ariseth another diuision of the partes of the common-wealth. For it is not enough to say that it consisteth of a multitude of houses & families, which make streets & villages, and the multitude of the streets and villages make townes, & the multitude of townes the realm, & that freemen be considered only in this behalfe, as subiects and citizens of the common wealth, and not bondmen, who can beare no rule nor iurisdiction over

freemen, as they who be taken but as instruments & the goods and possessions of others. In which consideration also we doe reiect women, as those whom nature hath made to keepe home and to nourish their family and children, and not to meddle with matters abroade, nor to beare office in a citie or common-wealth no more than children and infants: except it be in such cases as the authoritie is annexed to the blood and progenie, as the crowne, a dutchie, or an erledome: for there the blood is respected, not the age nor the sexe. Wherby an absolute Queene, an absolute Dutches or Countesse, those I call absolute, which haue the name, not by being married to a king, duke, or erle, but by being the true, right & next successors in the dignitie, and vpon whom by right of the blood that title is descended: These I say, haue the same authoritie although they be women or children in that kingdome, dutchie or erledome, as they shoulde haue had if they had been men of full age. For the right and honour of the blood, & the quietnes and suretie of the realme, is more to be considered, than either the tender age as yet impotent to rule, or the sexe not accustomed (otherwise) to intermeddle with publick affaires, being by common intendment vnderstood, that such personages neuer doe lacke the counsell of such graue and discrete men as bee able to supplie all other defectes. This (as I saide) is not enough: But the diuision of these which be participant of the common-wealth is one way of them that beare office, the other of them that beare none: the first are called magistrates, the second priuate men. Another the like was among the Romanes of *Patritij* and *plebei*, y^e one strining with the other a long time, the *patritij* many yeeres excluding the *plebei* from bearing rule, vntill at last all magistrates were made common betwene them: yet was there another diuision of the Romanes, into *senatores*, *equites* and

plebs

plebs: the Greekes had also *ἀριστοι καὶ δαμναιοὶ*. The French haue also at this day, les nobles, & la populaire, or gentils homes & Villanies: we in England diuide our men commonly into foure sortes, Gentlemen, Citizens, yeomen, artificers, and labourers. Of gentlemen the first and chiefe are the king, the prince, dukes, marquises, earles, vicountes, barrons, and these are called *κατ' ἑξοχὴν* the nobilitie, and all these are called lords and noble men: next to these be knightes, esquires and simple gentlemen.

Of the first part of Gentlemen of England,
called Nobilitas maior.

CHAP. 17.

Dukes, marquises, earles, vicountes, and barons, either be created by the Prince, or come to that honour by being the eldest sonnes, as highest and next in succession to their Parents. For the eldest of Dukes sonnes during his fathers life is called an Earle: an Earles sonne is called by the name of a Vicount or Baron, or else according as the creation is. The creation I call the first donation and condition of the honour (given by the Prince for good seruice done by him, and aduancement that the Prince will bestowe vpon him) which with the title of that honour is commonly (but not alwaies) given to him and to his heires, males onely: the rest of the sonnes of the Nobilitie, by the rigour of the lawe be but Esquires, yet in common speache, all Dukes and Marquises sonnes, and the eldest sonne of an earle be called lordes. The which name commonly doth agree to none of lower degree than Barons, excepting such onely, as be thereunto by some speciall office called. The Baronny or degree of lordes doeth

Nobilities maior.
Eldest sons of dukes are not earles by birth, but lords and take their place aboue earles, and so are earles eldest sonnes in respect of Barons.
Esquiers of honour, or lords.

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answers to the dignitie of the Senators of Rome, and the title of our Nobilitie to their *patritij*: when *patritij* did betoken *Senatores*, and *Senatorum filios*. Censurum was in Rome, at diuers times diuers, & in England no man is created a Baron, except he may dispend a yeerely reuenue one thousand pounds, or one thousand markes at the least. Vicounts, Earles, Marquises and Dukes more, according to the proportion of the degree & honour, but though by chance he or his sonne haue lesse, he keepeth his degree: but if they decay by excesse, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted the vpper house in the Parliament, although they keepe the name of lord still.

Of the second sort of Gentlemen, which may be called Nobilitas minor, and first of Knights,

CHAP. 18.

NO man is a knight by succession, not by the king or prince. And y name of prince in England *rex* *princeps* betokeneth the kings eldest sonne or prince of Wales: although the king himselfe, his eldest sonne, and all Dukes be called by generall name Princes. But as in Fraunce the kings eldest sonne hath the title of the Daulphine, and hee, or the next heire apparant to the Crowne is Monsieur, so in England the kings eldest sonne is called *rex* *princeps* the Prince. Knights therefore be not borne but made, either before the battaile to encourage them the more to aduenture their liues, or after the conflict, as aduancement for their hardinesse and manhoode already shewed: or out of the warre for some great seruice done, or some good hope through the vertues which do appeare in them. And they are made either

either by the king himselſe, or by his commiſſion and royall authoritie giuen for the ſame purpoſe, or by his Lieutenant in the warres, who hath his royall and abſolute power committed to him for that time. And that order ſeemeth to anſwere in part to that which the Romanes called *Equites Romanos*, differing in ſome points, and agreeing in other, as their common-wealth & ours do differ and agree: for neuer in al points one common-wealth doth agree with another, no nor long time anie one common-wealth with it ſelf. For all changeth continually to more or leſſe, and ſtill to diuers and diuers orders, as the diuerſitie of times doe preſent occaſion, & the mutabilitie of mens wittes doth inuent and aſſay new wayes, to reſorme and amend that wherein they doe find fault. *Equites Romani*, were choſen *ex cenſu*, that is, according to their ſubſtaunce and riches. So bee knights in England moſt commonly, according to the yeerely reuenue of their lands, being able to maintaine that eſtate: yet all they that had *Equeſtre cenſum*, non *legabantur Equites*. No more are all made knightes in England that may diſpend a knightes land or ſee, but they onely whom the king will ſo honour. The number of *Equites* was vncertaine, and ſo it is of knights, at the pleaſure of the Prince. *Equites Romani* had *equum publicum*. The knights of England haue not ſo, but find their owne horſe themſelues in peace time, and moſt vſually in warres.

Cenſus Equeſter was among the Romanes at diuers times of diuers value: but in England whoſoeuer may diſpend of his free landes fourtie poundes ſterling of yeerely reuenue, by an olde lawe of England, either at the coronation of the king, or marriage of his daughter, or at the dubbing of the Prince knight, or ſome ſuch great occaſion, may be by the king compelled to take that order and honour, or to pay a fine, which many not

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so desirous of honour as of riches, had rather disburse. Some, who for causes are not thought worthy of that honour and yet haue abilitie, neither be made knights, though they would, and yet pay the fine of xl.li. sterling at that time when this order began, which maketh now Cxx.li. of currant mony of England: as I haue more at large declared in my booke of the diuersitie of standards, or the valor of monies.

When the Romanes did write, *Senatus populusque Romanus*, they seemed to make but two orders, that is, of the Senate, and of the people of Rome, and so in the name of people they contained Equites and plebem: so when we in England doe say the lordes and the Commons: the knights, esquires, & other Gentlemen, with citizens, burgesses and yomen, be accounted to make y Commons, In ordaining of lawes, the Senat of lordes of England is one house, where the Archbishops and Bishops also be, and the king or queene for the time being as chiefe, the knights and all the rest of the Gentlemen, Citizens and Burgesses which be admitted to consult vpon the greatestt affaires of the Realme, be in another house by themselves, and that is called y house of the Commons, as wee shall more clearly describe when we speake of the Parliament. Whereupon this word knight is deriued, and whether it do betoken no more but that which miles doth in latine, which is a Souldier, might be moued as a question. The worde Souldier now seemeth rather to come of sould & painēt, and more to betoken a waged or hired man to fight, than otherwise, yet Caesar in his commentaries called foldures in the tongue gallois, men who deuoted & swore themselves in a certaine band or othe one to another, and to the Captaine: which order if the Almaines did follow, it may be that they who were not hyred, but being of the Nation, vppon their owne charges, and for their aduance,

nauncement, and by such common oath or band that did follow the wars, were (possibly) *nam' i' f' x' l' w'* called knights or milites, and now among the Almains some are called Lanceknights, as souldiers of their band not hyred, although at this day they be for the most part hirelings. And peradventure it may be that they which were next about the Prince, as his guard and sernautes, picked or chosen men out of the rest, being called in the Almain language knighten, which is as much to say as seruants: these men being found of good seruice, the worde afterward was taken for an honoꝛ, and for him who maketh profession of armes. Our language is so changed, that I dare make no iudgement thereof. Nowe we call him knight in English, that the French calleth cheualier, and the Latine *equitem*, or *equestris ordinis*.

And when any man is made a knight, hee kneeling downe is stroken of the Prince, with his sword naked, vpon the back or shoulder, the Prince saying, sus or sois chualier au nom de Dieu, and (in times past) they added S. George, and at his arising the Prince saith, auancér. This is the manner of dubbing of knightes at this present: and that terme dubbing, was the old terme in this point, & not creation. At the coronation of a king or queene, there be knights of the bath made, with long & more curious ceremonies. Knights bannerets are made in the field, with the ceremonie of cutting off the point of his standert, and making it as it were a banner: he being before a bachelor knight, is now of a greater degré, allowed to display his arms in a banner as Barons do. But this order is almost grown out of vse in England. But howsoeuer one be dubbed or made a knight, his wife is by and by called a ladie, as well as a Barons wife: he himselfe is not called Lord, but hath to his name in common appellatiõ added this syllable, Sir, as if he before were named Thomas, William, Iohn or Richard.

chard, afterward hee is alwaies called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the title which men giue to knightes in England. This may suffice at this time, to declare the order of knight-hood, yet there is an other order of knights in England which he called the Knightes of the Garter. King Edward the third, after he had obtained many notable victories, king Iohn of Fraunce, king Iames of Scotland, being both prisoners in the tower of London at one time, and king Henrie of Castel the bastard expelled out of his realme, and Don Petro restored vnto it by the Prince of Wales and Duke of Aquitaine called the blacke Prince, inuented a societie of honour, and made a choise out of his owne realme and dominions, and all Chriſtendome: and the best and most excellent renowned persons in vertues and honour, he did adozn with that title to be knightes of his order, gaue them a garter decked with gold, pearle and pretious stones, with the buckle of gold, to weare dayly on the left legge onely, a kirtle, gowne, cloke, chaperon, collar, and other august and magnificall apparell both of stufte and fashion exquisite and heroicall, to weare at high feastes, as to so high and princely an order was meete: of which order he and his successors kinges and quenes of England to be the soueraigne, and the rest by certaine statutes and lawes among themselves, be taken as brethren and fellowes in that order, to the number of xxvi. But because this is rather an ornament of the realme than any policie or gouernement thereof, I leaue to speake any further of it.

Of Esquiers.

CHAP. 19.

Escuier or esquier (which we call commonly squire) is a French worde, and betokeneth *Scutigerum* or *Armigerum*

Armigerum, and be all those which beare armes (as wee call them) or armozies (as they terme them in French) which to beare is a testimonie of the nobilitie or race from whence they doe come. These be taken for no distinct order of the Commonwealth, but doe go with the residue of the Gentlemen: saue that (as I take it) they be those who beare armes, testimonies (as I haue said) of their race, and therefore haue neither creation nor dubbing: or els they were at the first costerels or the bearers of the armes of lords or knights, and by that had their name for a dignitie and hono^r giuen to distinguish them from a common souldier called in Latine, *Gregarius miles*.

Of Gentlemen.

CHAP. 20.

Gentlemen be those whom their bloud and race doth make noble and knowen, *Ευγενεις* in Greeke, the Latines call them all *Nobiles*, as the French Nobles, *Βυρβαν* or *Nobilitas* in Latine is defined, honour or title giuen, for that the ancesto^r hath been notable in riches or vertues, or (in fewer words) olde riches or prowes remaining in one stocke. Which if the successo^rs do keepe and followe, they be verè *nobiles*, and *Ευγενεις*: if they doe not, yet the fame and wealth of their ancesto^rs serue to couer the so long as it can, as a thing once gilted though it be copper within, till the gilt be wo^rne away. This hath his reason, for the Etimologie of the name serued the efficacie of the word. *Gens* in Latine betokeneth the race and surname, so the Romanes had Cornelios, Sergios, Appios, Fabios, Aemilios, Pisones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name, were also Gentiles: and remaining the

memorie of the glorie of their progenitors fame, were Gentlemen of that or that race. This matter made a great strife among the Romanes, when those which were noui homines, were more allowed, for their vertues new and newly shewen, than the old smell of auncient race newly defaced by the cowardise and euill life of their nephews and discendents could make the other to be. Thus the Cicerones, Catones, and Marij had much a doe with those auncients, and therefore saide Iuuenalis:

*Malo pater tibi sit Therfites, dummodo tu sis
Aeacidi similis vulcaniaque arma capeffas.*

Quam te Therfiti similem producat Achilles.

But as other Common-wealths were faine to doe, so must all Princes necessarily follow: that is, where vertue is, to honour it. And although vertue of auncient race be easier to be obtained, aswell by the example of the progenitors, which encourageth, as also through habilitie of education and bringing vp, which enableth, and the lastly enracied loue of tenants and neighbors to such noble men and gentlemen, of whom they hold, and by whom they doe diuel, which pricketh forward to ensue in their fathers steps. So if all this doe faile (as it were great pitie it should) yet such is the nature of all humane things, and so the worlde is subiect to mutabilitie, that it doth many times faile: but when it doth the Prince and common-wealth haue the same power that their predecessors had, and as the husbandman hath to plant a newe tree where the olde faileth, so hath the Prince to honour vertue where he doth finde it, to make gentlemen, esquires, knights, barons, earls, marquises and dukes, where hee seeth vertue able to beare that hono^r or merits, and deserues it, and so it hath alwaies been vsed among vs. But ordinarily the k. doth only make knights, & create barons, or higher degrees:

for as for gentlemen, they be made good cheape in England. For whosoever studieth the lawes of the realme, who studieth in the Uniuersities, who professeth libe-
rall Sciences: and to be short, who can liue idely, and without manual labour, and will beare the port, charge and countenance of a Gentleman, he shall bee called maister, for that is the title which men giue to esquires and other Gentlemen, and shall be taken for a Gentleman. For true it is with vs as is said, *Tanti eris alijs, quanti tibi feceris*: And (if need be) a king of Herauldes shall also giue him for money armes newly made and inuented, the title whereof shall pretend to haue been found by the said Herauld in perusing and beewing of olde Registers, where his auncestors in times past had been recorded to beare the same. Or if hee will doe it more truely, and of better faith, hee will write that for the merites of that man, and certaine qualities which he doth see in him, and for sundry noble actes which hee hath performed, hee by the authoritie which he hath, as king of Heraulds and armes, giueth to him his helmes these and these armes: which being done, I thinke hee may be called a Squire, for he beareth euer after those armes. Such men are called sometime in scoone, gentlemen of the first head.

V Whether the maner of England in making

Gentlemen so easily, is to be allowed.

CHAP. 21.

A Man may make doubt & question, whether this maner of making gentlemen is to be allowed or no, & for my part I am of that opinion that it is not amisse. For first the prince loseth nothing by it, as he should do if it were as in France: for the yeoman or husbandman

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is no more subject to taile or tare in England than the gentleman: no, in euery paiment to the king the gentleman is more charged, which he beareth the gladlier, and dareth not gainsay, for to save and keepe his honoz and reputation. In any shewe or muster, or other particular charge of the towne where he is, hee must open his purse wider, and augment his portion aboue others, or els hee doth diminish his reputation. As for their outward shewe, a gentleman (if hee will be so accounted) must goe like a gentleman, a yeoman like a yeoman, and a rascall like a rascall: and if hee be called to the warres, he must and will (whatsoever it cost him) array himselfe, and arme him according to the vocation which he pretendeth: he must shew also a more manly courage, and tokens of better education, higher stomacke, and bountifuller liberaltie than others, and keepe about him idle seruautes, who shall doe nothing but wayt vpon him. So that no man hath hurt by it but he himselfe, who hereby perchance will beare a bigger sayle than hee is able to maintaine. For as touching the policie and gouernment of the Commonwealth, it is not those that haue to doe with it which will magnifie themselves, and goe in higher buskins than their estate will beare: but they which are to be appointed, are persons tried and well knownen, as shall be declared hereafter.

Of Citizens and Burgeses.

CHAP. 22.

NExt Gentlemen be appointed Citizens and Burgeses, such as not onely be free, and receiued as officers within the Cities, but also be of some substance to beare the charges. But these Citizens and Burgeses, be

be to serue the common-wealth, in their cities and bur-
rowes, or in corporate towns where they dwell. Gene-
rally in the shires they be of none account, saue onely
in the common assembly of the realme to make lawes,
which is called the Parlement. The ancient cities ap-
point foure, and eche borough two, to haue voyces in it,
and to giue their consent or dissent, in the name of the
citie or borough for which they be appointed.

Of Yeomen.

CHAP. 23.

Those whom we call yeomen, next vnto the nobilitie,
knightes and squires, haue the greatest charge and
doings in the common-wealth, or rather are more tra-
uelled to serue in it than all the rest: as shall appeare
heereafter. I call him a yeoman whom our lawes doe
call *Legalem hominem*, a word familiar in writtes and
enquestes, which is a freeman borne English, and may
dispend of his owne free land in yerelely reuenue to the
summe of xl.s. sterling. This maketh (if the iust va-
lue were taken now to the propoztion of monies) vi.li.
of our currant money at this present. This sort of peo-
ple confesse themselves to be no gentlemen, but giue
the honoꝝ to all which be or take vpon them to be Gen-
tlemen, and yet they haue a certaine preheminence and
more estimation than labourers and artificers, & com-
monly liue wealthily, keepe good houses, and do their bu-
sines, & trauaile to acquire riches: these be (for the most
part) farmoꝝ vnto gentlemen, which with grasing, fre-
quenting of markets and keeping seruauntes not idle
as the Gentleman doth, but such as get both their
owne living and part of their maisters, and by these
meanes doe come to such wealth, that they are able
and dayly doe buy the landes of vntyriftie gentlemen,
and

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and after setting their sonnes to the schoole at the Universities, to the lawes of the realme, or otherwise leaving them sufficient landes whereon they may live without labour, doe make their saide sonnes by those meanes Gentlemen: These be not called maisters, for that (as I said) pertaineth to Gentlemen onely. But to their surnames men adde Goodman: as if the surname be Luter, Finch, White, Browne, they are called goodman Luter, goodman White, goodman Finch, goodman Browne, amongst their neighbors, I meane not in matters of importance, or in lawe. But in matters of lawe & for distinction, if one were a knight, they would write him (for examples sake) Sir Iohn Finch knight, so if hee be an Esquire, Iohn Finch Esquire or Gentleman, if he be no Gentleman, Iohn Finch yeoman. For amongst the gentlemen they which claime no higher degree, and yet be to be exempted out of the number of the lowest sort thereof, be written Esquires. So amongst the husbandmen, labourers, lowest and rascall sorte of the people, such as be exempted out of the number of the rascallitie of the popular be called and written yeomen, as in the degree next unto Gentlemen. These are they which old Cato calleth *Aratores*, and *optimos ciues in Republica*, and such as of whom the writers of commonwealths praise to haue many in it. Aristotle namely reciteth *μὲν δὲ τινες μισοπολιτικαί*: these tend their owne businesse, come not to meddle in publick matters and iudgments: but when they are called, and glad when they are deliuered therof, are obedient to the gentlemen and rulers, and in warre can abide trauaile and labor, as men bled to fight for their lordes of whom they hold their landes, for their wiues and children, for their countrey and nation, for praise and honour against they come home, and to haue the loue of their lord and his children, to be continued towardes them and their children, which haue

haue aduentured their liues to and with him and his. These are they which in the old world gate that honoz to England, not that either for wit, conduction, or for power they are or were euer to be compared to the gentlemen, but because they be so many in number, so obedient at the Lordes call, so strong of bodie, so hard to endure paine, so couragious to aduenture with their lord or captaine going with, or before them, for els they be not hastie nor neuer were, as making no profession of knowledge of warre. These were the good archers in times past, and the stable troupe of footemen that affraide all Fraunce, that woulde rather die all, than once abandon the knight or gentleman their captaine, who at those dayes commonly was their Lord, and whose tennantes they were, readie (besides perpetuall shame) to be in danger of vndoing of themselves, and all theirs if they should shew anie signe of cowardise or abandon the lord, knight or gentleman of whom they held their liuing. And this they haue amongst them from their forefathers tolde one to another. The gentlemen of Fraunce and the yeomen of England are renowned, because in battaile of horsemen Fraunce was manie times too good for vs, as we againe alway for them on fote. And gentlemen for the most part be men at armes and horsemen, and yeomen commonly on fote: howsoever it was, yet the gentlemen had alwaies the conduction of the yeomen, and as their captaines were either a fote or vppon a little nagge with them, and the kings of England in foughten battles remaining alwaies among the footemen, as the French kings among their horsemen. Eche Prince thereby, as a man may gesse, did shewe where hee thought his strength did consist. What a yeoman is I haue declared, but from whence the word is deriued it is hard to say: it cannot be thought that yeomen shoulde be said

If

a young

Geman in
the Saxon is
a married
man, and
hereof com-
meth our
ycoman, for

after marriage men are accounted settled members in the common-wealth, but not before. A yonker cometh of yong heire which is a sonne and heire to a gentleman or a yong gentleman.

a young man, for commonly we doe not call anie a yeoman till hee be married, and haue children, and as it were, haue some authoritie among his neighbours. Yonker in low Dutch betokeneth a meane gentleman, or a gay fellow. Possible our yeomen not being so bold as to name themselves gentlemen, when they came home, were content when they had heard by frequentation with lowe Dutchmen, of some small Gentleman (but yet that would be counted so) to be called amongst them, yonker man, they calling so in warres by mockage or in sport the one another, when they came home, yonker man, and so yeoman: which word now signifieth among vs, a man well at ease, and hauing honestly to liue, and yet not a gentleman: whatsoeuer that word yonker man, yonke man, or yeoman doth moze or lesse signifie to the Dutchmen.

Of the fourth sort of men which
doe not rule.

CHAP. 21.

The fourth sorte or classe amongst vs, is of those which the olde Romanes called *capite sensu proletarij* or *operæ*, day labourers, poore husbandmen, yea merchantes, or retailers which haue no free land, copiholders, and all Artificers, as Taylers, Shoemakers, Carpenters, Brickmakers, Bricklayers, Masons, &c. These haue no voyce nor authoritie in our Common-wealth, and no account is made of them but onely to be ruled, and not to rule other, and yet they be not altogether neglected. For in Cities and corporate townes for default of yeomen, enquests and Iuries are impaneled of such maner of people. And in Villages they be commonly made Churchwardens, Alecunners, and many

manie times Constables, which office toucheth moze the Common-wealth, and at the first was not imploied vpon such low and base persons. Wherefoze generally to speake of the Common-wealth, o2 policie of England, it is gouerned, administred, and manured by three sortes of persons, the Prince, Monarch, and head Gouernour, which is called the king, o2 if the crowne fall to a woman, the Queene absolute, as I haue heretofore said: In whose name and by whose authozity all things are administred. The gentlemen, which be deuided into two partes, the Baronie o2 estate of Lozdes containing Barons and all that be aboue the degree of a Baron, (as I haue declared befoze :) and those which be no Lozdes, as Knights, Esquires, and simply Gentlemen.

The third and last sorte of persons is named the yeomanrie: Each of these hath his part and administration in iudgements, corrections of defaults, in election of offices, in appointing and collection of tributes and subsidies, o2 in making lawes, as shall appeare hereafter.



The Common-wealth

THE SECOND BOOKE.

The diuision and definition of the Laws
of this Realm in generall.

CHAP. I.



The lawes of Eng- } Iudgement
land consist in } and
two poynts, } Practize.

In Iudgement } Persons.
are considered the } Place.
} Matter, and
} Maner.

The Persons in iudge- } Judges in the courtes.
ment are the } Sergeants and counsellors.

In practise are considered the } Persons,
} and their
} Office.

The persons are } Protonotharies.
} Solicitors, and
} Attorneys.

Their office is to prepare the matter, and to make it
readie for the Judges to determine.

The Protonotharies are the Clerks in the Court
which doe record the matters hanging in iudgement,
and doe frame the pleading, enter the rules and orders
of the Court, the verdictes and iudgements given in
the same.

Solicitors are such, as being learned in the lawes,
and

and informed of their maisters cause, doe informe and instruct the Counsellors in the same.

Attorneys are such as by experience haue learned, and doe know the orders and manner of proceeding, in euery court where they serue, & doe purchase out writs and processe belonging to their Clients cause. They see to his suites, that hee be not hindered by negligence. They pay the fees belonging to the Courtes, and prepare the cause for iudgement.

The places for iudgement are the courts where sentence is giuen, and the lawes made: as, the parlement, Chauncerie, kings bench, the Common-pleas, the Exchequer, the court of Wardes, the Star-chamber, the Court of Requestes, and the Duchie Court of Lancaster.

The matter of the Lawe is } Justice,
and
Equitie.

The maner of their severall proceedings, followeth.

Of the Parlement, and the authoritie thereof.

CHAP. 2.

THe most high and absolute power of the Realme of England consisteth in the Parlement. For as in warre, where the king himself in person, the Nobility, the rest of the gentilitie, and the yeomanrie are, is the force and power of England: So in peace and consultation where the prince is to give life, and the last and highest commandement, the Barronnie for the Nobilitie and higher: the knightes, esquires, gentlemen and commons for the lower part of the commonwelth, the bishops for the clergie be present to aduertise,

consult and shew what is good & necessarie for the common-wealth, and to consult together, and vpon mature deliberation, euery bill or lawe being thise read and disputed vpon in either house, the other two parts first ech a part, and after the Prince himselte in pzenence of both the parties, doth consent vnto and alloweth. That is the Princes and whole Realmes deede: whereupon iustly no man can complaine, but most accomodate himselte to finde it good, and obey it.

That which is done by this consent is called firme, stable and *sanctum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh new, giueth order for things past, and for things hereafter to be followed, chaungeth rights and possessions of priuate men, legitimateth bastardes, establissheth formes of religion, altereth waightes and measures, giueth formes of succession to the Crowne, defineth of doubtful rights, whereof is no lawe already made, appointeth subsidies, tails, taxes, & impositiōs, giueth most free pardons and absolutions, restorēth in bloud and name, as the highest court, condēneth or absolueth them whom the Prince will put to that trial. And to be short, al that euer the people of Rome might do, either in *Centuriatis comitijs*, or *tributis*, the same may be done by the Parliament of England, which representeth, and hath the power of the whole Realme, both the head and the bodie. For euery Englishman is intended to be there pzenent, either in person, or by pzouration and atturny, of what preheminence, state, dignitie, or qualitie soeuer he be, from the Prince (be he king or quēne) to the lowest person of England. And the consent of the Parliament is taken to be euerie mans consent.

The Judges in Parliament are the king or quēnes Maiestie, the Lordes tempozall and spirituall, the Commons represented by the knightes and burgeses of

Alias Tri-
bunitis.

of euery Shire and Bozough Towne. These all, or the greater part of them, and that with the consent of the Prince for the time being, must agree to the making of Lawes.

The officers in Parlement are the Speakers, two Clarkes, the one for the higher house, the other for the lower, and Committies.

The speaker is he that doth commend and pzeferre the billes exhibited into the Parlement, & is the mouth of the Parlement. He is commonly appointed by the King or Queene, though accepted by the assent of the house.

The Clarkes are the keepers of the Parlement rolles and recozdes, and of the statutes made, and haue the custodie of the priuate statutes not printed.

The Committies are such as either the Lordes in the higher house, or burgeses in the lower house, doe chosse to frame the Lawes vppon such billes as are agreed vppon, and afterward to be ratified by the sayd houses.

The forme of holding the

Parlement.

CHAP. 3.

The Prince sendeth forth his rescripts or writtes to euerie duke, marques, baron, and euerie other Lord tempozall or spirituall who hath voice in the Parlement, to be at his great counsell of Parlement such a day (the space from the date of the writte is commonly at the least fortie daies:) he sendeth also writtes to the Sheriffes

Sheriffes of euery shire, to admonish the whole shire to chouse two knights of the Parlement in the name of the shire, to heare and reason, and to giue their aduise and consent in the name of the shire, and to be present at that day: likewise to euerie citie and towne, which of auncientie hath been wont to find burgeses of the parlement, so to make election, that they might be present there at the first day of the Parlement. The knightes of the shire be chosen by all the Gentlemen and yeomen of the shire, present at the day assigned for election: the voyce of any absent can be counted for none. Yeomen I call heere (as befoze) that may dispend at the least xl.s. of yeerely rent of free land of his owne. These meeting at one day, the two who haue the more of their voyces be chosen knights of the shire for that Parlement: likewise by the pluralitie of the voyces of the citizens and burgeses, be the burgeses elected. The first day of the Parlement the Prince and all the Lordes in their robes of parlement doe meete in the higher house, where after praiers made, they that be present are witten, and they that be absent vpon sicknesse, or some other reasonable cause (which the prince will allow) doe constitute vnder their hand and seale some one of those who be present, as their procurer, or atturney, to giue voice for them, so that by presence or atturney and proxy they be all there, all the princes and barons, and all archbishops and bishops, and (when Abbots were) so many abbots as had voice in parlement. The place where the assembly is, is richly tapested and hanged, a princely and royal thzone as appertaineth to a king, set in the midst of the higher place thereof. Next vnder the prince sitteth the chancelor, who is the voice and orator of the prince. On the one side of that house or chamber sitteth the archbishops and bishops, ech in his ranke, on the other side the dukes and barons. In the
middest

amiddest thereof vpon woollackes sitteth the Judges of the realme, the maister of the roules, and the secretaries of estate. But these y^e sit on the woollackes haue no voice in the house, but onely sit there to aunswere their knowledge in the law, when they be asked, if any doubt arise among the Lordes: The secretaries doe answere of such letters or things passed in counsell, whereof they haue the custodie and knowledge: and this is called the vpper house, whose consent and dissent is giuen by ech man seuerally and by himselfe, first for himselfe, and then seuerally for so many as hee hath letters and p^{ro}uises, when it commeth to the question, saying only content or not content, without further reasoning or replying. In this meane time the knightes of the shires and burgeses of the parlement (for so they are called that haue voice in parlement, and are chosen as I haue said befoze, to the number betwixt iij.C. and iij.C.) are called by such as it pleaseth the p^{ri}nce to appoint, into an other great house or chamber by name, to which they answere: and declaring for what shire or towne they answere, then they are willed to chuse an able and discrete man to be as it were the mouth of them all, and to speake for and in the name of them, and to present him so chosen by them to the p^{ri}nce: which done, they comming all with him to a bar, which is at the nether end of the vpper house, there he first praiseth the p^{ri}nce, then maketh his excuse of inabilitie, and prayeth the p^{ri}nce that he would commaund the commons to chuse another. The Chancelloz in the p^{ri}nces name doth so much declare him able, as he did declare himselfe vnable, and thanketh the commons for choosing so wise, discrete and eloquent a man, and willeth them to goe and consult of lawes for the comonwealth. When the speaker maketh certain requests to the p^{ri}nce in the name of the commons, first, that his maiesty would be content

that they may vse and enioy all their liberties and priuiledges that the common house was wont to enioy.

Secondly that they may frankly and freely say their mindes in disputing of such matters as may come in question, and that without offence to his Maiestie.

Thirdly if anie shoulde chance of that lower house to offend, or not to doe or say as should become him, or if anie should offend anie of them being called to that his highnesse court, that they themselues might (according to the ancient custome) haue the punishment of them. And fourthly, that if there came anie doubt, wherupon they shall desire to haue the aduise or conference with his Maiestie or with any of the Lordes, that they might doe it: all which he promisseth in the Commons names, that they shall not abuse, but haue such regard as most faithful, true and louing subjects ought to haue to their Prince.

The Chancelloz answereth in the Princes name, as appertaineth. And this is al that is done for one day, and sometime two. Besides the Chanceloz, there is one in the vpper house who is called Clarke of the Parliament, who readeth the billes. For all that cometh in consultation either in the vpper house or in the neather house, is put in writing first in paper, which being once read, he that will, riseth vp and speaketh with it or against it: and so one after another so long as they shall thinke good. That done they go to another, and so another bill. After it hath bene once or twice read, and doth appeare that it is somewhat liked as reasonable, with such amendement in wordes and peraduenture some sentences as by disputation seemeth to be amended: in the vpper house the Chanceloz asketh if they will haue it ingrossed, that is to say, put into parchment: which done, and read the third time, and that eftsoones if any be disposed to object disputed again among them,

the

the Chancelor asketh if they will goe to the question: and if they agree to go to the question, then he saith, here is such a lawe or act concerning such a matter, which hath been thise read here in this house, are ye content that it be enacted or no? If the not contents be moe, then the bill is dashed, that is to say, the lawe is annihilated, and goeth no further. If the contentes be y^e moe, then the Clarke writeth underneath: Soit baille aux commons. And so when they see time, they send such billes as they have approved by two or thre of those which doe sit on the woolsacks to the commons: who asking licence, and coming into the house, with due reverence, saith to the speaker: Master speaker, my Lordes of the upper house have passed among them and thinke good, that there should be enacted by parlement such an act, and such an act, and so readeth the titles of that act or acts. They pray you to consider of them, and shew them your advise, which done they go their way. They being gone, and the doore againe shut, the speaker rehearseth to the house what they saide. And if they be not busie disputing at that time in another bill, hee asketh them streight way if they wil have that bill or (if there be moe) one of them.

In like maner in the lower house the speaker sitting in a seate or chaire for that purpose somewhat higher, that he may see and be seen of them all, hath before him, in a lower seate his Clarke, who readeth such billes as be first propounded in the lower house, or be sent down from the Lordes. For in that point ech house hath equal authoritie, to propound what they thinke meete, either for the abrogating of some lawe made before, or for making of a newe. All billes be thise in thre diuerse daies read and disputed vpon, before they come to the question. In the disputing is a marvellous good order vled in the lower house. Hee that standeth by

bareheaded is vnderstanded that hee will speake to the bill. If moe stand vp, who that is first iudged to arise, is first heard, though the one doe praise the lawe, the other dissuade it, yet there is no alteration. For euerie man speaketh as to the speaker, not as one to another, for that is against the order of the house. It is also taken gainst the order, to name him whom ye doe confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill, and gaue this & this reason. And so with perpetuall Duration not with alteration, he goeth through till hee doe make an end. He that once hath spoken in a bill, though he be confuted straight, that day may not reply, no though hee would change his opinion. So y to one bill in one day one may not in that house speake twice, for else one or two with alteration would spend all the time. The next day he may, but then also but once.

No reuiling or nipping wordes must be vsed. For then all the house will cry, it is against the order: and if any speake vnrerently or seditiously against the Prince or y priue Counsell, I haue sen them not only interrupted, but it hath been moued after to the house, and they haue sent them to the Tower. So that in such a multitude, and in such diuersitie of mindes, and opinions, there is the greatest modestie and temperance of speech that can be vsed. Neuerthelesse with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it be for vrgent causes and hastening of time. At the afternoone they keepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in anie bill to moue or dissuade it. But when any bill is read, the speakers office is, as briefly and as plainly as he may to declare the effect thereof to the house. If the com-
mons

mons doe assent to such billes as be sent to them first agreed vpon from the Lords thus subscribed, Les commons ont assentus, so if the Lords doe agré to such billes as be first agreed vpon by the Commons, they send them downe to the speaker thus subscribed, Les Seigneurs ont assentus, If they cannot agré, the two houses (foz euerie bill from whence soeuer it doth come is thise read in each of the houses) if it be vnderstood that there is any sticking, sometimes the Lordes to the Commons, sometime the Commons to the Lordes doe require that a certaine of ech house may méte togither, and so eche part to be enformed of others meaning, and this is alwaies graunted. After which meeting for the most part, not alwaies either part agré to others billes.

In the vpper house they giue their assent and dissent each man seuerally and by himsele, first for himsele, & then for so many as he hath p^{ro}rie. When the Chancello^r hath demaunded of them whether they will go to the question after the bill hath been thise read, they saying onely content or not content, without further reasoning or replying: and as the more number doth agré, so it is agreed on, or dashed.

In the nether house none of them that is elected either knight or burges can giue his voyce to another, nor his consent or dissent by p^{ro}rie. The more part of them that be p^{re}sent onely maketh the consent or dissent. After the bill hath been twice read, and then engrossed and est^oones read and disputed on inough as is thought, the speaker asketh if they will go to the question. And if they agré he holdeth the bill vp in his hand and saith, as many as will haue this bill go forwarde, which is concerning such a matter, say yea. Then they which allow the bill crie yea, and as manie as will not, say no: as the crie of yea or no is big-

ger, so the bill is allowed or dashed. If it be a doubt which crie is the bigger, they deuide the house, the speaker saying, as many as doe allowe the bill goe downe with the bill, and as many as doe not, sit still. So they diuide themselves, and being so deuided they are num- bzed who make the more part, and so the bill doth speed. It chaunceth sometime that some part of the bill is al- lowed, some other part hath much contrarietie and doubt made of it: and it is thought if it were amended it would go forward. Then they chouse certaine com- mittees of them who haue spoken with the bill & against it, to amend it, and bring it in againe so amended, as they amongst them shall thinke meete: and this is be- fore it is engrossed, yea and sometime after. But the agreement of these committees is no pzeiudice to the house. For at the last question they wil either accept it or dash it, as it shall seeme good, notwithstanding that whatsoeuer the committees haue done.

Thus no bill is an act of Parlement, ordinance, or edict of lawe, vntill both the houses seuerally haue agreed vnto it after the order aforesaide, no no then nei- ther. But the last day of that parlement or session the Prince commeth in person in his parlement robes, and sitteth in his state: all the vpper house sitteth about the prince in their states and order in their robes. The speaker with all the common house commeth to the barre, and there after thankesgiuing first in the Lozdes name by the Chancelor, &c. And in the commons name by the speaker to the Prince, for that hee hath so great care of the good gouernment of his people, and for cal- ling them together to aduise of such things as should be for the reformation, establishing and ornament of the common-wealth: the Chancellor in the Princes name giueth thanks to the lords & commons for their paines and trauailes taken, which he saith the Prince will re- member

member and recompence when time and occasion shall serue, and that hee for his part is readie to declare his pleasure concerning their proceedings, whereby y^e same may haue perfect life & accomplishment by his princely authoritie, and so haue the whole consent of the realme. Then one reade the Titles of euerie act which hath passed at that session, but onely in this fashion: An act concerning such a thing &c. It is marked there what the prince doth allow, and to such he saith: Le roy, or la Royne le veult. And those be taken now as perfect laws and ordinances of the realme of England and none other, and as shortly as may be put in print, except it be some priuate cause or lawe made for the benefite or prejudice of some priuate man, which the Romans were wont to call *privilegia*. These be only exemplified vnder the seale of y^e Parlement, and for y^e most part not printed. To those which the Prince liketh not, hee answered, Le Roy, or la Royne saduisera, and those be accounted vtterly dashed and of none effect.

This is the order and forme of the highest and most authenticall court of England, by vertue whereof all those things be established whereof I spake before, and no other means accounted auailable to make any new forfeiture of life, member, or landes of any English man, where there was no lawe ordained for it before. Now let vs speake of the said partes when they be seuerall.

Of the Monarch, King or Queene

CHAP. 4.

The Prince whom I nowe call (as I haue often before) the Monarch of England, King or Queene, hath

hath absolutely in his power the authoritie of war and peace, to desie what Prince it shall please him, and to bid him warre, and againe to reconcile himselfe and enter into league or truce with him at his pleasure or the aduice onely of his priue Counsell. His priue counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the knights, and esquires, such and so many as he shall thinke good, who doth consult daily, or when neede is of the weightie matters of the realme, to giue therein to their prince their best aduise they can. The prince doth participate to them all, or so many of them as he shall thinke good, such legations and messages as come from forren princes, such letters or accurrents as be sent to himselfe or to his secretaries, and keepeth so many ambassades and letters sent vnto him secret as he will, although these haue a particular oth of a counsellor touching faith and secrets administred vnto them when they be first admitted into that companie. To that herin the kingdom of England is farre more absolute than either the Dukedome of Venice is, or the kingdome of the Lacedemonians was. In warre time, and in the field the Prince hath also absolute power, so that his word is a law, hee may put to death, or to other bodily punishment, whom he shall thinke so to deserue, without proesse of lawe or forme of iudgement. This hath bene sometime vsed within the realme before any open warre, in sudden insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, asmuch as of the present necessitie, especially, when by any meanes the punishment might haue been done by order of lawe. This absolute power is called martiall law, and euer was and necessarily must bee vsed in all camps and hostes of men, where the time nor place do suffer

suffer the tardiance of pleading and processe, be it neuer so short, and the important necessitie requireth speedie execution, that with more alwe the Souldier might bee kept in more strait obedience, without which neuer capitaine can doe any thing vaileable in the warres.

The Prince vseth also absolute power in crying and decreeing the money of the realme by his proclamation onely. The money is alwaies stamped with the princes image and title. The form, fashion, maner, weight, finenesse and basenesse thereof, is at the discretion of the prince. For whom shoulde the people trust more in that matter than their prince, seeing the coyne is only to certifie the goodnesse of the mettall and the waight, which is affirmed by the princes image and marke? But if the Prince will deceiue them, & giue them copper for silver or gold, or enhaunce his coyne more than it is worth, he is deceiued himselfe, as well as hee doth goe about to deceiue his subiects. For in the same sort they pay the prince his rentes and customes. And in time they will make him pay ratibly or more for meat, drinke, and victuals for him and his, and for their labour: which experience doth teach vs now in our daies to be done in all Regions. For there euer hath been, and euer will be a certaine proportion betweene the scarcitie and plentie of other things, with gold and silver. For all other measures and weights, aswell of dry things as of wet, they haue accustomed to be established or altered by the Parlement, and not by the princes proclamation onely.

The Prince vseth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paines for transgressing of lawes, where the pain of the Lawe is applyed onely to the Prince. But where the forfaiture (as in popular actions it chaunceth

manie times) is part to the Prince, the other part to the declarator, detector or informer, there the Prince doth dispenſe for his owne part onely. Where the criminall action is intended by inquisition (that maner is called with vs at the Princes suite) the Prince giueth absolution or pardon, yet with a clause, *modo stet rectus in curia*, that is to say, that no man object against the offender. Whereby notwithstanding that he hath the Princes pardon if the person offended will take vpon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serue the offender.

The prince giueth all the chiefe and highest offices or magistracies of the realme, be it of iudgement or dignitie, temporall or spirituall, and hath the tenthes and first fruites of all Ecclesiasticall promotions, except in the Vniuersities, and certaine colledges which be exempt.

All wittes, executions and commaundements, bee done in the Princes name. We doe say in England, the life and member of the kings subiects are the kings onely, that is to say, no man hath hault nor moyenne iustice but the king, nor can hold plea thereof. And therefore all those pleas which touch the life or the mutilation of man, be called pleas of the crowne, nor can be done in the name of any inferior person than he or shee that holdeth the crowne of England. And likewise no man can giue pardon thereof but the Prince onely: although in times past there were certaine Countie Palatines, as Chester, Durham, and Glouc, which were hault Iusticers, and wittes went in their name, and also some Lord Marchers of Wales, which claimed like priuiledge: all these are now wozn away. The supreme iustice is done in the kings name, and by his authority onely.

The Prince hath the wardship and first marriage of al those that hold land of him in chiefe. And also the gouernment of all soles naturall, or such as be mad by aduenture of sicknesse, and so continue, if they be landed. This being once grounded by act of parlement (although some inconuenience hath been thought to grow thereof, and since that time it hath bene thought verie vnreasonable) yet once annexed to the crowne, who ought to go about to take the club out of Hercules hand? And being gouerned iustly & rightly, I see not so much inconuenience in it, as some men would make of it: diuers other rights and preheminences the prince hath, which be called prerogatiues royals, or the prerogative of the king, which be declared particularly in the booke of the common lawes of England.

To be short, the prince is the life, the head, and y^e authoritie of all things that be done in the realme of England. And to no prince is done more hono^r & reuerence, than to the king and quene of England: no man speaketh to the prince, nor serueth at the table, but in adoration and kneeling, all persons of the realme be bare headed befoze him: insomuch that in the chamber of presence where the cloth of estate is set, no man dare walk, yea though the prince be not there, no man dare farrie there but bareheaded. This is vnderstode of the subiectes of the realme, for all strangers be suffered there and in all places to vse the maner of their countrey: such is the ciuilitie of our Nation.

The chiefe points wherein one Common

wealth doth differ from another.

CHAP. 5.

NOW that we haue spoken of the Parlement (which is the whole, vniuersall, and generall consent and

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authoritie as wel of the prince, as of the nobilitie & commons, that is to say, of the whole head and body of the realme of England) and also of the prince, (which is the head, life and gouernour of this commonwealth:) there remaineth to shew, how this head doth distribute his authoritie and power to the rest of the members for the gouernment of his realme, and common-wealth of the politicke bodie of England. And whereas all common-wealths & gouernments be most occupied, and be most diuers in the fashion of fīue things: In making of laws and ordinances, for their owne gouernment: in making of battell and peace, or truce with foraine nations, in prouiding of money for the maintenance of themselves within themselves, and defence of themselves against their enemies, in choosing and election of the chiefe officers and magistrates: and fiftly, in the administration of iustice. The first and third wee haue shewed is done by the prince in Parliament. The second and fourth by the prince himselfe: the fift remaineth to be declared.

Of three maners and formes of trials or iudgements in England.

CHAP. 6.

By order and vsage of England there be three wayes and maners whereby absolute and definite iudgement is giuen, by parlement, which is the highest and most absolute, by battell, and by the great assise.

Triall or iudgement by Parlement.

CHAP. 7.

The maner of giuing iudgement by Parlement betwene priuate and priuate men, or betwene the Prince

Prince and any private man, be it in matters criminall or ciuill, for land or for heritage, doth not differ from the order which I haue prescribed, but it proceedeth by bill thise read in eche house, and assented to as I haue said before, and at the last day confirmed and allowed by the Prince. Howbeit such billes be seldome receiued, because that great counsell beeing enough occupied with the publique affaires of the realm, wil not gladly intermedle it self with private quarrels and questions.

The triall of iudgement by battle.

CHAP. 8.

This is at this time not much vsed, partly because of long time the Pope and the clergy, to whom in time past we were much subiect, alwaies cried against it as a thing damnable and vnlawfull: and partly because in all common wealths, as to the tongue, so to the maners, fashions, habits, yea and kinds of trials & iudgements, and to all other things that is therein vsed, time & space of yeares bringeth a change. But I could not yet learn that it was euer abrogated. So that it remaineth in force, whensoever it be demaunded. The maner of it is described in Briton.

The triall by assise or twelue men, and first of
the three parts which be necessarie in iudgement.

CHAP. 9.

The two first iudgementes be absolute, supreme and without appeale, and so is also the iudgement by the great assise. And because our maner of iudgements in England is in many thinges different from the fashion

used either in France or in Italy, or in any other place the Emperours laws and constitutions (called the civil lawes) be put in use, it will be necessary here to make a little digression, to the intent, that that which shalbe said hereafter, may be better understood. All pursuits and actions (we call them in our English tongue pleas) and in barbarous (but now usuall) Latine, placita, taking that name abusive of the definitive sentence, which may well be called placitum, or *apiscer*. The French useth the same, calling in their language, the sentence of their iudges areste or arest: in which words notwithstanding after their custome they do not sound the s. But we call placitum the action, not the sentence, and placitare barbarously, for to plead in English, agere, or litigare. Now in all iudgements being two parties, the first we call the impleader, suiter, demander or demandant, and plaintiffe. In criminall causes, if he professeth to bee an accuser, we call him appellant, or appellour, and so, accusation we call appeale. The other we call the defendant, & in criminall causes, prisoner, for hee cannot answer in causes criminal befoze he doe render himselfe, or be rendered prisoner.

Iudex, is of vs called Judge, but our fashion is so diuers, that they which giue the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Judges, but the twelue men. And the same order as well in ciuill matters and pecuniarie, as in matters criminal.

Of Pleas or Actions.

CHAP. IO.

PLEAS or Actions criminal be in English called pleas of the crowne, which be all those which tend to take away

away a mans life or any member of him, for his euill
deseruing against the Prince and common-wealth.

And this name is giuen not without a cause. For ta-
king this for a principle, that the life and member of an
Englishman is in the power onely of the prince and his
lawes, when any of his subiects is spoyled either of life
or member, the Prince is endanmaged thereby, & hath
good cause to aske account how his subiectes should come
to that mischiefe. And againe, forsomuch as the prince
who gouerneth the scepter, and holdeth the crowne of
England, hath this in his care and charge, to see the
Realme well gouerned, the life, members and posses-
sions of his subiectes kept in peace and assurance: he
that by violence shall attempt to breake that peace & as-
surance, hath forsaited against the scepter and crowne
of England: and therefore not without a cause in all
inquisitions and indictments, if any be found by the ry-
men to haue offended in that behalf, straight the prince
is said to be partie, and he that shall speake for the pri-
soner shall be rebuked, as speaking against the prince.
Nevertheless, it is neuer defended, but the prisoner,
and partie defendant, in any cause may alledge for him
all the reasons, meanes, and defences that he can, and
shall be peaceably heard and quietly. But in those
pleas and pursuites of the Crowne, Procuroz or Ad-
uocate he gets none, which in ciuill and pecuniarie
matters (be it for land, rent, right, or possession, althogh
hee pleade against the Prince himselfe) he is neuer de-
nied.

Sauing in
appeales, and
vpon a speci-
all plea,
Actio, is the
parties whol
suite: Breue,
is the kings
precept.

Pleas ciuill be either personall or reall: personall, as
contracts or for iniuries: reall, be either possessorie, to
aske, or to keepe the possession: or in rem, which we call
a writ of right. For that which in the ciuill law is cal-
led actio, or formula, we call writte in English: so the
Graekes called it *wozde for wozde* and in our bar-
barous

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barous Latine we name it *breue*.

And as the olde Romanes had their actions some *ex iure ciuili*, and some *ex iure pratorio*, and ordinarily *praetor dabat actiones, & formulas actionum* : so in England we retaine still this, and haue some writtes out of the Chancerie, other out of the common pleas, or the kings bench.

Of the chiefe Tribunals, Benches, or Courts of England.

CHAP. II.

In times past (as may appeare to him that shall with iudgement reade the Histories and antiquities of England) the courtes and benches followed the king and his court wheresoeuer he went, especially shortly after the conquest. Which thing being found very cumbersome, painfull, and chargeable to the people, it was agreed by Parlement that there should be a standing place where iudgement should be giuen. And it hath long time been vsed in Westminster hall, which king William Rufus builded for the hall of his owne house. In that hall be ordinarily seen three Tribunals, or Iudges seates. At the entry on the right hand the common-pleas, where ciuill matters are to be pleaded, specially such as touch landes or contractes. At the vpper end of the hall on the right hand, the kings bench, where pleas of the crowne haue their place. And on the left hand sitteth the Chancello, accompanied with the maister of the Rolles, who in Latin may be called *custos archiuorum Regis*, and certaine men learned in the ciuill lawe, called Masters of the Chauncerie, in Latine they may be called *Assessores*.

Of

Of the times of pleading called Termes:

and of the Chauncellor and

Chancerie.

CHAP. 12.

Two things may be moued in question here, how all England (being so long and so large, and hauing so manie shires and prouinces therein) can be answered of iustice in one place, and in 3. benches, be they neuer so great: Another (whereas the kings bench is exerci- sed in criminall causes, and in all pleas of the crowne, and the common place in all ciuill causes, real, and per- sonall) what place then hath the Chauncerie?

The first question will seeme moze maruellous, and haue moze occasion of doubt, when I shall also tell that the Law is not open at all times, no not the third part of the yeare. But where all other Cities and common wealthes had all the yeare pleas, suites and iudge- mentes, except for certaine holy dayes and haruest, and bintage, or when for some bzgent cause the lawe was commaunded to be stopped, which is called *Iusitium*: Contrarie in ours it is but few times open. That is only foure times in the yeare, which they call Termes. After Michaelmas about ten dayes, during five or sixe weekes at the least. After Christmas about a moneth, enduring by the space of thre weekes. Then from eby. days after Easter by the space of thre weekes and odde dayes. Likewise from the first or seventh day after Tri- nitie Sunday, during two weekes and odde dayes. All the rest of the yeare there is no pleading, entring nor pursuing of actions. This small time, and all that, but in one place may seeme verie iniurious to the pro- ple, who must be faine to suffer much wzong for lacke of Justice and of place and time to pleade: but vn-

to that hereafter I intend to answer more fully, and in the meane while that shal suffice which the wise Cato answered to one who moued that the pleading place in Rome might be couered ouer with canuas as their Theaters were, to the intent that the plaintiffs and defendants that were there might plead their matters more at ease, and not be in so much danger of their health by the heate of the Sunne striking full and open vppon their heads, which was no small grieve and disease, specially at Rome. Nay (saith Cato) for my part I had rather with that al the waies to the place of pleading were cast ouer with Galthrops, that the feete of such as loue so well pleading, should feele so much pain of those pricks in going thither as their heades do of the Sunne in farrying there: hee meant that they were but idle, hote heades, busie bodie, and troublesome men in the common-wealth that did so nourishe pleading: good labourers and quiet men could be content to end their matters at home by iudgment of their neighbours and kinsfolke without spending so their money vppon Procurers and Advocates whom we call Attorneys, Counsellors, Sergeantes, and generally men of lawe. Those he accounted profitable citizens, who attend their honest labour and businesse at home, and stand not waiting and gaping vppon their Rolles and proceesse in the law: as for the other, by his iudgement, it was no matter what mischief they suffered. To the other question of the chanterie, this I answered: That our lawe which is called of vs the common law, as yee woulde say *Ius civile*, is and standeth vppon ~~and is called~~ that is *Ius summum*: and their marimees be taken so straitly that they may not depart from the tenour of the wordes, even as the olde ciuill lawe was. And therefore as that lacked the helpe of a Pretor (which might *moderari iudicium summum*, giue actions where

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nque

none was; mitigate the exactness and rigour of the law written, give exceptions, as *metus, doli mali, minoris, etatis, &c.* for remedies, and maintaine alwaies *equum bonum*:) the same order and ranche holdeth our chauncerie, and the chauncelloz hath the verie authoritie herein as had the Pretor in the olde ciuill lawe before the time of the Emperours. So he that putteth vp his bill in the chauncerie, after that he hath declared the mischiefe wherein hee is, hath reliefe as in the solemne *Forum*. And forsomuch as in this case he is without remedie in the common lawe, therefore hee requi- reth the chauncelloz according to equitie and reason to prouide for him, and to take such order as to good conscience shall appertaine. And the court of the chaun- cerie is called of the common people the court of consci- ence, because that the chauncelloz is not strained by rigour or forme of wordes of lawe to iudge but *ex aequo* and *bono*, and according to conscience as I haue saide. And in this court the vsuall and proper forme of plea- ding of England is not vsed, but the forme of pleading by writing, which is vsed in other countries according to the ciuill law: and the triall is not by xii. men, but by the examination of witnesse as in other courtes of the ciuill lawe.

Out of this court, as from the person of the Prince come all maner of originall writtes. The declaration of writtes is at large set downe in the register of writs, and in the *Natura breuium*. Out of this court come most commonly Commissions, Patentes, Licences, Inqui- sitions, &c.

The Judges of this court are the lord Chauncelloz of England, Assistentes, the maister of the Rolles, and six Maisters of the chauncerie, which are commonly Doctors of the ciuill law.

Officers are the sixe clarkes of the chauncerie, the

Clarke of the Crowne general, the Register, the Controller of the Seale, two examiners, the Clarke of the hamper, the three Clarks of the pettie bagge, the Cursiters, the Sergeant of the Mace.

The lord Chancelloz is the keeper of the great Seale, and hath it carried with him wheresoeuer he goeth.

The maister of the Rolles is the keeper of the Records, Judgements and Sentences giuen in the court of Chauncerie.

The sixe Maisters are assistants to the court, to shew what is the equitie of the ciuil law, and what is Conscience.

The Clarke of the Crowne is the chiefe Guardian of all the matters of the Crowne: what are Crowne matters and pleas of the Crowne, see in the learned booke of Stanford, called the Pleas of the Crowne.

The sixe Clarks are the Attorneys aswel for the Plaintiffe, as Defendant in euerie suite in this court.

The Register is the engrosser and keeper of the decrees, publications, orders and iniunctions issuing out of this court.

The two Examiners are such as take the examination of the witnesses brought to proue or reproue any thing in suite this court, and to put their depositions & answers made to their interrogatories in writing.

The Comptroller of the Seale is to see and allow of all the writs made in this Court.

The Clarke of the Hamper is hee that doth receiue the fines due for every writ sealed in this Court.

The three Clarks of the Petie bagge are they that receiue the offices that are founde in the Court of Wardes.

The Cursiters are Clarks appointed to their severall shires which doe write originall writtes that belong to this Courtoz the Commonplace.

The

The Sergeant carrieth the Writ before the Lord Chauncelloz, and is to call any man before him at his commaundement.

The Proceſſe in the Chauncerie is a *Sub pena*, which is but to call the partie before him vpon a paine, as vpon paine of xl. li. sc. And this is the way vsed to bzing in the partie, or else by the Sergeant as before.

The punishment is, if the partie will not come in, or comming in, will not obey the order of the Court, imprisonment during the pleasure of the Lord Chauncelloz.

The order of proceeding is by Injunctions, decrees and orders which are to binde the partie, and if he resist his punishment is imprisonment.

The matters in this court are all causes wherein equitie and extremitie of lawe doe strue, and where the rigour of lawes haue no remedie, but conscience and the moderation of *Summum ius* hath sufficient.

And here is to be noted, that conscience is so regarded in this court, that the lawes are not neglected, but they must both ioyne and meete in a third, that is, in a moderation of extremitie.

This Court is called of some *Officina Iuris Civilis Anglorum*, because out of this court issue all manner of proceſſe which giue the partie his cause of action in other courtes.

Of Iudges in the common Lawe of England, and the manner of triall and pleading there.

CHAP. 13.

The Prince out of the numbers of those who haue been Counsellors or Sergeantes at the Law, which

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be those who in Latine are called *causidici* or *aduocati*, chooseth two of the most approued for learning, age, discretion, and exercise, of whom the one is called chiefe Justice of the Kings bench, or simply chiefe Justice, the other, chiefe Justice of the common place, and others to the number of sixe or more, which haue each an ordinary fee or stipend of the Prince.

These doe sit at such dayes as be terme, which may be called *Dies legitimi iuriditi*, or *fasti*, in their distinct places, as I haue said before. There they heare the pleading of all matters which doe come before them: and in ciuill matters where the pleading is for money, or land, or possession, part by writing, and part by declaration and altercation of the aduocates the one with the other, it doth so procede before them till it doe come to the issue, which the Latines doe call *statum causæ*, I do not meane *contestationem litis*, but as the Rhetoricians doe call *statum*, wee doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and darke vessell issueth out, is voyded and emptied) and no where else: that stroke well stricken is the departing of all the quarrels. Issues or *status* in our law be ordinarily two, *facti* and *iuris*.

Of the Kings Bench.

CHAP. 13.

The Kings Bench is the Kings court, so called because usually the Kinges haue sitten there, and also because that therein are all causes handled which appertain to the Crowne: and such causes as wherein the King or Queene is a partie, if they properly appertain not to some other court.

The

The Judges of the Kings Bench are the Lord chief Justice of England, with other his companions assistant in giuing iudgement.

The Sergeantes and Counsellors doe debate the cause.

The sentence is giuen by the chief Justice, the others all or the most part assenting, as it shall appeare to be in other courts likewise. If they cannot agree, then is the matter referred to a demurre in the exchequer chamber before all the Justices of both the Benches, viz. the kings Bench, and the common pleas, and the Lord chiefe Barron of the Exchequer.

The officers in the Kings Bench are, the chiefe Prothonotharie, the Secondary, the clarke of the Crowne, the clarke of the Exigents, the clarke of the Papers, the Custos Breuium, and Custos Sigilli.

The Prothonotharie is he, that recordeth all iudgements, orders, and rules in this court, and all verdicts giuen, being not of Crowne matters.

The Secundarie to the Prothonotharies deputie, for the said causes, and hee is the keeper and maker vp of these records in booke.

The clarke of the crown, is to frame all inditeiments of felonie, treason, murther, &c. all maner of appeales, and after to record them, and enter the verdict, and to make and keepe the Records touching these matters.

The clarke of the Exigents is to frame all manner of Procceses of *Exigi facias*, which doe issue out of that court to outlawe any man, and to recorde the outlawry.

The clarke of the Papers is he that keepeth all rolles, scriptes, and pleadings, and other thinges in writing which are not of record.

The Custos breuium is he which fileth all the writs
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iudiciall and original, after the Sheriffe hath returned them, hee is chargeable if any be embeseled or priuily conueied away from the file.

The Custos Sigilli is he that doth keep the Seale, and seeketh all iudiciall wryttes, and all Patentes, licenses issuing out of this court, and taketh the fee due for them, and therof to make his accompt.

There are certaine Atturneys belonging to this court in number as the Prothonothorie shall appoint: those are for Plaintiffes and defendants in euery cause, and they frame and make the pleadings.

The maner of proceeding in this court is by Latitat, Arrest, and Bill.

The Latitat is to bring the partie in when he is not to be found, or will not appeare and answere.

Arrest is when the party is arrested, and then is bounden to finde bayle. viz. two sufficient sureties or more as the case shall need.

By Bill the suite is when the partie is in *Custodia Mareschali*, and is from thence brought to answere.

The Matters in this Court are properly all matters of the Crowne, whereof see Stanfords booke aforesaide.

In these they proceede by Inditementes, verdict, appeale, Improperly all suites wherein the king is a partie, or may haue any losse. Such are Conspiracies, Champarties, Imbrastier, Maintenance, Decies tantum maymes, Slanders, actions sur le cas: of these see *Natura breuium*.

Of

Of the court of common pleas.

CHAP. 14.

The court of common pleas is the kings court, where in are holden all common pleas between subiect and subiect, of all matters of Common law : so called, for that it serueth for the exact and precise administration of the common law.

The Judges in this Court are, lord chiefe Justice of the common pleas, three other his associates. The sergeant at the lawe, whose number is sometime more, sometimes lesse, at the pleasure of the prince. These all are sworn to serue the turne of the common law at this barre.

Two of them are alwaies appointed to serue the Princes turne in what Court soeuer, and are called the D. Sergeants.

The officers of this Court are the Custos Breuium, three Prothonotaries, the Clarke of the warrants, the Clarke of the Escoynes, diuers Attorneys, Fillisers for euery shire, Exigenters for euerie shire, the Clarke of the Juries, the Cirographer for fines, the Clarke of the Quenes silver for errors in this court committed, the Clarke of the seale, as before for the kings bench.

The Custos breuium is the chiefe Clarke in the court, and he hath the custody of all the writtes whatsoever returnable into this court, come they either at the day of the returne, or after the day, which is called Post diem.

The Prothonotaries are they which after the parties have appeared in Court, doe enter the matters in suite, and make the pleadings, and enter them.

The Fillisers are they which make up all meane

proces vpon the originall writtes, and the same writs returned by the sherife, are by the attorneis deliuered to the Custos breuium to file or string, there to remaine of record.

The Exigenters are such as make out the exigentes and writs of proclamation into euerie countie, where the parties are, that vpon the meane proces or summons will not appeare.

The Clarke of the warrants is hee which doth take the warrants of an attorney, which shall prosecute for the plaintife or defendant: and is he that enrolleth all deedes acknowledged before the Iustices of the same Court.

The Clarke of the Essoynes is hee which doth essoyne the defendants in euery action, before the day of his appearance.

An essoyne is an ordinary delay by office of Court in action: and the officer before whom the Clark is to take the essoynes, is the puny Iustice in the common pleas, who for that purpose sitteth thre dayes before the Tearme.

The common attorneis are such as are allowed in this Court by the lord chiefe Iustice of the common pleas, and his assistance, to prosecute or defend according to the instructions of their clients, for the plaintife or defendant.

The Clarke of the iuries is hee that doth make the Venire facias, to the sherife to warne the Iuries by.

The Cirographer is he that hath the writte of covenant with the concord brought vnto him, & hee maketh Indentures tripartite, wherof two are deliuered to the partie for whose vse the fine is acknowledged. And the third part is reserved with him. And all the proclamations of the same fine, according to the statutes made, are endozed on the third part remaining, and it is commonly

monly called the foote of the fine.

The Clarke of the Queenes silver is a distinct office of the fines, and is he who setteth downe the mony that her Maiestie is to haue for the fine, according to the yearly value of the land confessed, knowen, deposed, or agreed vpon.

All errors in this court committed, are reformed in the kinges bench, before the lord chiefe Justice, and other Justices there assistant by writ of error.

There is also the Clarke of the outlawries, who is the kings Atturney generall, and hee entereth the outlawrie for the Queene, after the exigent deliuered: and he maketh all the writtes of outlawrie, and none are to be made but by him.

The matters of the common pleas are all suites of common law commenced by any writ, originall, reall, or personall.

Reall are such as touch the inheritance, or fee of any man.

Personall are such as touch transitorie thinges, as goods, chattels, personall wrongs, &c.

The difference betwene a writ originall, and a writ iudiciall, is this: the originall saith in the end of it (in the person of the king or quene) teste meipso, or me ipsa, apud Westmonasterium. The iudiciall writ saith in the end, Teste Christophoro Wray, or Teste Iacobo Dier, or such other as shalbe lord chiefe Justice of either of those benches.

The order of processes how they followe the one after the other. In this court is first a summoneas in some action, then an Attachias, but in most a Capias, then a Capias pluries then Exigi facies, and a proclamation into the countie where the defendant dwelleth.

The Summoneas is the originall, and goeth out of the Chancerie, and is directed to the sherife, to bring the

partie by a day.

The sheriffes order in seruing this writte, is to goe himself, or his Bailife, to the land, and there to garnish the partie, by sticking vp a sticke on his land, which done, the sherife returneth two comon pledges, Iohannes Do, and Richardus Ro, and two Summonees, Richardus Den, Henricus Fen. After the summones, if the partie come not in, issueth out an Attacheas, in nature of a precept, to authorize the sherife to goe to his land or house, and there to take a pledge for his appearance.

But if the partie plaintife meane to outlaw the defendant, he getteth a Summoneas out of the Chancery to the sherife to warne the partie, who returneth nihil habet, &c. Then the plaintife getteth a Capias to take his body, and then a Lias capias, then a pluries capias, to al which the sherife returneth in order as they be giuen out, Non est inuentus. After which if the partie appeare not, goeth out to the sherife the Exigi facias, and a proclamation to proclaim the partie in fve severall Countie daies: after which proclamations if he do not appeare, he is returned Quinto exactus, & non comparuit, & ideo vtlagatus, vnlesse he do first purchase a Superfedeas, to the court to surcease. The Superfedeas is granted at the suite of the plaintife, to stay the outlawrie, and is an apparance to the suite, for the defendant suggesting to the court, that his exigent improvide emanauit, shewing that the defendant was alwaies readie to appeare by his attorney. This done, the plaintife declareth, the defendant answereth, if the answer be issuable they proceed to triall. The maner of proceeding is either to iotne issue, and so to passe to verdict, or els to demurre. The triall is by verdict, when the question is made de facto, as, where the matter was done, when, by whom, &c.

Of the two maner of Issues.

CHAP. 15.

If the question be of the lawe, that is, if both the parties doe agree vpon the fact, and eche doe claime that by lawe he ought to haue it, and will still in that sorte maintaine their right, then it was called a demurrer in law: where if in the law the case seeme to the Judges that sit, doubtfull, it is called a checker chamber case, and all the Judges will meete together, and what they shall pronounce to be the lawe, that is held for right, and the other partie loseth his action or land for ever. If the sergeantes or counsellors doe stand vpon anie point in the law which is not so doubtfull, the Judges who be taken for most expert, biddes him go forward, and if he hath no other to say, but standeth vpon that point of the law, that bidding go forward is taken that he loseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or Iuris. So is that case where the law is not doubtfull, according to the matter contained in the declaration, answer, replication, rejoinder, or triplication, the Judge out of hand decideth it. And it is the manner that eche partie must agree to the other still in y fact which he cannot deny. For if he once come to denie any deed as not done, not his writing, y the man by whom the aduersarie claimeth, was not the aduersaries auncestor, or the euidence which his aduersarie bringeth is not true, or that his gift was former, or anie such like exception which is auailable to abate the action, or barre the partie: and the other ioyneth in the affirmatiue, and will auerre and proue the same, this is called the issue, and immediatly

But sometimes it is determined by the same court onely.

This should be meant of a respondes ouster, when the opinion is against him that taketh an exception which is not peremptorie. He may deny it by protestation.

by all question of the law ceaseth, as agreed by both the parties, that there is no question in the law. When as y^e issue facti is found by the twelve men of whom we shal speake heereafter, so the one partie or other loseth his cause and action: so that contrarie to the manner of the ciuill law, where first the fact is examined by witnesses indices, torments, and such like probations, to find out the trueth thereof, and that done, the aduocates do dispute of the law, to make of it what they can: saying, ex facto ius oritur. Here the sergeantes or counsellors before the Judges doe in passing forward with their pleading determine and agree vpon the law, and for y^e most part, and in maner all actions, aswel criminal as ciuil, come to the issue and state of some fact which is denied of the one partie, & auerred of the other, which fact being tried by the twelve men, as they finde, so the action is woon or lost. And if a man haue manie peremptory exceptions (peremptorie exceptions I call only those which can make the state and issue) because the twelve men be commonly rude and ignorant, the partie shalbe compelled to chosse one exception whereupon to found his issue, which chosen, if he faile in that by the verdict of twelve men, he loseth his action and cause, and the rest can serue him for nothing.

Having seen both in France and in other places manie deuises, edicts and ordinances, how to abridge processe, and to finde how that long suites in law might be made shorter, I haue not perceiued nor read, as yet, so wise, so iust, and so well deuised a meane found out as this, by any man among vs in Europe.

Trueth it is, that where this fashion hath not been v^sed, and to them to whom it is newe, it will not bee so easily vnderstood, and therefore they may peraduenture be of contrary iudgement: but the more they doe weigh & consider it, the more reasonable they shall find it.

How

How the issue, question, or status iuris is decided, I have tolde: now I will shew how it is tried whe it doth come to the question, state, or issue of the deed or fact. And first I must speake moze largely of the manner of proceeding in the procelle, and of such persons as be necessarie for the execution thereof.

Of the sherife of the shire, and of the

Court of Exchequer.

CHAP. 16.

The Romanes had to execute the commandements of the magistrates, Lictores, Viatores, Accensos. The ciuill law since that time hath other names, terms, and officers. The execution of the commaundements of the magistrates in England, is ordinarily done by the sherifes. The sherife (which is as much to say as the Reeue or Baylie of the shire) is properly word for word Questor prouincia. it is he which gathereth vp, and accounteth for the profites of the shire, that come to the Exchequer. The Exchequer (which is Fiscus principis, or ararium publicum, and I cannot tell in what language it is called Scaccarium, some thinke it was first called Statarium, because that there was the stable place to account for the reuenues of the crowne, aswel that which came of the patrimonie, which we call the demeasnes, as that which cometh of other incident acquisitions, be they rentes, customes, tenthes, quinziesmes, taxes, subsidies, wheresoeuer the pzince or his court be, according to the time and occasion) was a place stable, continuall, and appointed for to reckon and account. The hearers of the account (who in Latin may be called tribuni ararii) haue auditors vnder them, which the Latines doe call Rationales, but they are the chiefe for the accountes

Scats in ancient Saxon is that which we by a borrowed terme call treasure, whereof is deriued Scaccarium signifying a court dealing with the kings treasure or reuenues, and also exchequer that is an officer which employeth the kings profit.

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accounts of the prince, & may be called iuridici rationales, in English we call them Barons of the Exchequer, whercof is one who is called the chiefe Baron, as Tribunus, or Iuridicus rationalis primus, or princeps. with others to them assistant: the Chancellor of the Exchequer, two Chamberlains, and Atturney generall. The chiefe of al is called high Treasurer of England, as you would say in Latine, Supremus ærarij anglici quæstor, or Tribunus ærarius maximus.

He hath the charge & keeping of the king or quænes treasure, and many officers are at his sole appointment and to him accountant, as well in the tower, exchequer, as elsewhere: as, Auditors in the mint, Auditors and tellers in the Exchequer, Receiuers, &c.

The Chancellor is the vnder treasurer, and is gouernour of the Court, vnder the high treasurer. Many officers also are at his appointment.

The chiefe Baron is the iudge in law cases incident to this court, the three other Barons are assistants.

The Atturney is the atturney generall, to defend the quænes right, and to peruse all grauntes, particulars, suites, and causes handled in this court. There are common atturneys besides, which serue for the suiters of this Court.

The other officers are two remembrancers, two Clerks of the Pipe, two of the first fruits and tenths.

The Remembrancers are those which keepe all the Records of the Exchequer betweene the queene and her subiectes, and enter the Rules and orders there made, the one is for the Prince, the other is for the lord Treasurer.

The Clerks of the Pipe are those that make leases vpon particulars, and receiue the thirties accomptes, those receiue also the bonds & titles of other assurances.

In the office of the first fruites are receiued all first fruites

fruites due to her Maiestie by Bishoppes, Deanes, and all ecclesiasticall persons, answerable by order of the Law.

Other officers are Tellers, Auditors, Collectors, rent gatherers, taile makers, &c.

The matters of this court are all penal punishment, as intrusions, alienations without license, penall forfeitures vpon popular actions (as a popular action is while the one part is given to the informer, the rest to the prince.) Of these see the whole bodie of the statutes at large, or in Rastalles collection.

In this Court are handled all payments, accompts. expences of the Queenes reuenues.

The vsuall Proceffe of this court is a *Sub pena* out of this Court, or a messenger to call the partie.

In this court be heard *Quadruplatores*, which wee call promoters, which be those that in popular and penall actions be delatores, hauing therby part of the profit by the law assigned. In this court if any question be it is determined after the order of the common lawe of England by the twelue men, as I haue said: and all customs which were in Latine called *Publicani*, in Greeke *παραίται* doe account in this office.

The Sherife of the shire is called in our common Latine *Vicecomes*, as one would say, *Vicarius comitis*, or *procomes*, doing that seruice, to attend vpon the execution of the comandementes of the Tribunals or iudges which the Earle or Countie should doe: which Earle or County for the most part was attending vpon y^e prince in the wars, or otherwise about the prince, as the word beareth, comes principis: whereby it may appeare, that the chiefe office of the Countie or Earle, was to see the kings iustice to haue course, and to be well executed in the shire or countie, and the Princes reuenues well answered, and brought in *ararium Principis*, which is called

called of vs the treasurie.

If anie fines or amercements, which in Latine bee called *multæ*, be leuied in anie of the said Courts vpon any man, or any arrerages of accounts by y^e Latines called *reliqua*, of such things as is of customes, taxes, subsidies, or anie other such occasions, the same the sherife of the shire doth gather, and is respondent therfore in the Exchequer. As for other ordinarie rents of patrimoniall landes, and most commonly for the taxes, customes and subsidies, there be particular receiuers and collectors, which do answer it into the Exchequer. The sherife hath vnder him an vnder sherife at his charge and appointment, learned somewhat in the law, especially if he be not learned himselfe, and diuers bailifes which be called errants, whom he maketh at his pleasure, who can know eche land and person in the shire, and their abilitie to goe vpon enquestes, either to distraine, or to summon him to appeare whom the sherife shall appoint: and for this cause to the sherifes as to the minister most proper of the lawe the writtes be directed.

When any thing commeth to an issue of the dede or fact, there is a writte or writting directed to the sherife of the shire where the land is, whereupon the controuerſie is, or where the man dwelleth of whom the money is demanded, which writte is called *venire facias*. Then after the same effect an *alias*, *pluries*, or *distringas* according to the nature of the action to the returne of the sherife. And if for any disobedience or not comming and appearing there be a fine (which the Latines doe call *Multa*) set vpon any iurores head, the sherife is charged with it, and taketh the distresses which in Latine be called *Pignora*, and answereth therfore to the exchequer. The sherife also is readie by himselfe or by his vndersherife to serue aswell the Iustices of peace

in their quarter sessions as the Iustices called *Itinerantes* in their great assises, when they come into the shire, which is twice in the yeare, to dispatch and void actions criminall and ciuil depending at the common law, and which be come nowe to the issue. Hee hath also the charge of all the prisoners committed to the prison which we call the goale, and when any is condemned to die, it is his charge to see the sentence executed. To be short, hee is as it were the generall minister and highest for execution of such commandements according to the law as the Judges doe ordaine, and this is enough for the Sherife.

Of the xii. men.

CHAP. 17.

Of what manner and order of men in the common welth the xii. men be I have already declared. The Sherife alwaies warneth xiiii. to appeare least peradventure any might be sick or haue a iust cause of absence: and if there be not enow to make an enquest, the absents be amerced. For although they be called xii. men, as a man would say *duodecim viri*, yet if they be xvi. or the whole number of xiiii. that is no matter, xii. they must be at the least to make an enquest, or as some call it a quest. An enquest or quest is called this lawfull kinde of triall by xii. men. In actions ciuill which is either of contracts or for land, or possession when so many of those which be warned appeare at the call as be able to make an enquest, which as I said before be no lesse then twelue, either part when they be come taketh their challenges against so many of them as they will, which be that hee may not spend so much land a yeere, he is alied, freed, or seruant to his aduerse partie,

he is his enemy, &c. And two of the whole number doe trie, and allow or disallow the rest.

If after acceptions there be so many rejected, that there is not a full enquest, in some cases that day is lost, in some the enquest is filled *ex circumstantibus*: When the quest is full, they be sworn to declare the truth of that issue, according to the evidence and their conscience. Then the Sergeants of either side declare the issue, and each for his client saith as much as he can. Evidences of writings be shewed, witnesses be sworn, and heard before them, not after the fashion of the civil law, but openly, that not onely the twelve, but the Judges, the parties, and as many as be present may heare what each witness doth say: The adverse partie, or his advocates which we call counsellors and sergeantes, interrogateth sometime the witnesses, and driueth them out of countenance.

Although this may seeme strange to our Civilians now, yet who readeth Cicero and Quintilian, well shall see, that there was no other order and maner of examining witnesses, or deposing among the Romanes in their time. When it is thought that it is enough pleaded before them, and the witnesses haue said what they can, one of the Judges with a briefe and pithie recapitulation, reciteth to the twelve in summe the arguments of the Sergeants of either side, that which the witnesses haue declared, and the chiefe points of the evidence shewed in writing, and once againe putteth them in mind of the issue, and sometime giveth it them in writing, deliuering to them the evidence which is shewed on either part, if any be, (evidence heere is called writings of contracts autentically, after the maner of England, that is to say, written, sealed, and deliuered) and biddeth them goe together.

Then there is a bayliffe charged with them, to keep them

them in a chamber not farre off, without bread, drinke, light or fire, untill they be agreed: that is, till they all agree vpon one verdict concerning the same issue, and vpon one among them, who shall speake for them all when they be agreed: for it goeth not by the most part, but ech man must agree. They returne, and in so fewe wordes as may be, they giue their determination: fewe I call sixe, seuen, or eight wordes at the most, (for commonly the issue is brought so narrow, that such number of wordes may be inough to affirme or to deny it,) which done, they are dismissed to goe whether they will. The partie with whom they haue giuen their sentence, giueth the enquest their dinner that day most commonly, and this is all that they haue for their labour, notwithstanding that they come, some xx. some xxx. or xl. miles or more, to the place where they giue their verdict, all the rest is of their owne charge. And necessarily all the whole xii. must be of that shire, and iij. of them of the hundred where the land lieth which is in controuersie, or where the partie dwelleth who is the defendant.

Of parties of Shires called Hundreds,

Lathes, Rapes, Wapentakes.

CHAP. 18.

A Hundred, or Lath, Rape, or Wapentake, be called of the diuisions or parts of shires in diuers countreys diuersly named, after the maner and language of each countrey. For the shires be deuised, some into x. xij. xiii. xvi. xx. or xxx. Hundreds, more or lesse, either that they were at the first C. Townes and Villages in each hundred: and although now they be but xvi. xx. xxx. xl. l. more or lesse, yet it is still called an hundred, or els there were but so many at the first as be nowe, or a

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fewe more or lesse, and they did finde the king to his warres an hundreth able men. Lathes, and Kapes I take to be names of seruice, for that so many townes in olde time, and in the first pouertie of the Realme did meete together in one day to carry the lordes corne into his barne, which is called in old English a Lathes. Of that they mette at commandement of the Lord to reape his corne.

Or as some say, because in such places the subiectes had their armor appointed them, and there did take their weapons.

Wapentake I suppose came of the Danes, or peradventure of the Saxons. For that so many townes came by their orders then, to one place, where was taken a muster of their armour and weapons, in which place from them that coulde not finde sufficient pledges for their good abearing, their weapons were taken away: weapen or wapen in old English doe signifie all armes offensive, as sword, dagger, speare, launce, bill, bowes, arrowes.

Of the place where the musters were taken, or where the saide seruices were done, the hundreds, Lathes, Kapes, and Wapentakes, had and haue yet their names, which be most commonly good townes, and it is to be thought at the first they were all such. But sometime now in places wherof the hundred hath the name, no mention nor memorie of a Towne remaineth: such mutation time bringeth with it of all things. A hundred hath one or two high constables, who hath some authoritie ouer all the lower and particular constables. Those high Constables be made by the Iustices of the peace of the shire, and each hundred hath his bailife, who is made by the Lord, if any hath that libertie, or else by the Sherife of the shire for the time being.

Of

Of the court Baron.

CHAP. 19.

IT may appeare strange that of xxxvi. shires, whereof each shire is diuided into diuers hundredes, each hundred containing diuers parishes, all pleading should be but in one place, that is in Westminster.hall, and that but in certaine times of the yere, making little more than one quarter of the yere in the whole. And one would thinke that there should be much lack of Justice and right, and much wrong take without redresse. But it is not so: The people being accustomed to liue in such an equalitie of Justice, and that in such sort that the rich hath no more aduantage therein than the poore, the proces, and proceedings to the iudgement being so short, and iudgements also being peremptorie and without appellation: yet to helpe for small matters, where no great summe is in question there are other courtes. In euerie shire from thre weekes to thre weekes, the sherife for small thinges not passing xl.s. and in certaine hundredes and liberties the bailie likewise from thre weekes to thre weekes holdeth plea. And whosoever is possessor and owner of a mannor, may hold from thre weekes to thre weekes, or at his pleasure of his tennantes and amongst his tennantes a court called a court Baron. And there his tenants being sworn make a Jury which is not called the enquest, but the homage. These principally doe enquire of the copie holders, and other free-holders that be dead since the last court, and bring in their heires, and next successors, and likewise of inroachment or intrusion of anie of the tenants against the Lord, or among themselves. They make orders and lawes amongst them

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themselves, the paine of them if they be after broken, commeth to the Lord. And if any small matter be in controuersie, it is put to them, and commonly they doe end it. But these courtes doe serue rather for men that can be content to be ordered by their neighbors & which loue their quiet and profite in their husbandrie, more than to be busie in the law. For whether partie soeuer will, may procure a writ out of the higher Court, to remoue the plea to Westminster.

In Cities and other great Townes there be diuers liberties to hold plea for a bigger summe, which doe determine as well as the common lawe, and after the same manner, and yet for them that will, it may be remoued to Westminster hall.

King Henrie the eight ordained first a President, Counsellors and Judges, one for the Marches of Wales, at Ludlow, or elsewhere: another for the North parts of England, at Yorke, where be many causes determined. These two are as be Parlements in France. But yet if there be any matters of great consequence, the partie may moue at the first, or remoue it afterwards to Westminster Hall, and to the ordinarie Judges of the realme, or to the Chaunceller, as the matter is.

These two Courtes doe heare matters before them, part after the common law of England, and part after the fashion of the Chauncerie.

Of the Leete, or Law day.

CHAP. 20.

Lete, or Law day is not incident to euery mannor, but to those onely which by speciall graunt, or long prescription, haue such libertie. This was, as it may
 appeare,

appeare first a special trust and confidence and commis-
 sion giuen to a few put in trust by the Prince, as is
 now to the Iustices of Peace, to see men swozne to the
 Prince, to take pledges and sureties in that maner of
 one for another to answere for obedience and trueth, to
 enquire of priuie conspiracies, fraies, murders, and
 bloudsheds, and to this was added the ouersight of bread
 and ale, and other measures. Manie times they that
 be out of the homage and Court Baron of that manor
 and lordship, be neuerthelesse astreined and answer-
 able to come to the Leete. This Leete is ordinarily kept
 but twice in the yeare, and that at termes and times
 prescribed.

The Leete and Law day is all one, and betokeneth
 word for worde, *legitimum* or *iuridicum diem*. Lawe the
 olde Barons called lant or lag, and so by corruption and
 changing of language from Lant to Leete, vnderstan-
 ding Day, they which keepe our full English terme,
 call it yet law day.

Of the proceedings of causes crimi- nall, and first of the Iustices of the Peace.

CHAP. 21.

BEfore the manner of proceeding in causes criminall
 can be well vnderstood, it will be necessarie to speake Iustices of
Peace.
 of three persons, the Iustices of peace, the Coroners,
 and the Constables. The Iustices of Peace be men e-
 lected out of the nobilitie, higher and lower, that is the
 Dukes, Marquises, Barons, Knights, Esquires, and
 Gentlemen, and of such as be learned in the Lawes,
 such, and in such number as the Prince shall thinke
 meete, and in whom for wisdom and discretion hee
 put,

putteth his trust, inhabitantes within the countie: saving that some of the high Nobilitie and chiefe Magistrates for honours sake are put in all, or in the most of the commissions of all the shires of England. These haue no time of their rule limitted but by commission from the Prince alterable at pleasure.

Justices of
Quorum.

At the first they were but 4. after 8. now they come commonly to 30. or 40. in every shire, either by increase of riches, learning, or actiuitie in policie and government. So many more being found, which haue either will, or power, or both, are not too many to handle the affaires of the commonwealth in this behalfe. Of these in the same commission be certaine named, which be called of the *Quorum*, in whom is especiall trust reposed, that where the commission is giuen to fortie or thirtie, and so at the last it commeth to foure or three, it is necessarie for the performance of many affaires to haue likewise diuerse of the *Quorum*. The words of the commission be such, *Quorum vos A B. C D. E F. vnum esse volumus.*

The Justices of the peace be those in whom at this time for the repressing of robbers, theues, and vagabounds, of priuie complots and conspiracies, of riotes, and violences, and all other misdemeanours in the commonwealth, the Prince putteth his speciall trust. Each of them hath authoritie vpon complaint to him made of any theft, robberie, manslaughter, murder, violence, complots, riotes, vnlawfull games, or any such disturbance of the peace, and quiet of the realme, to commit the persons whom hee suppoeth offenders, to the prison: and to charge the Constable or Sherife to bring them thither, the Gaoler to receiue them and keepe them till he and his felowes doe meete. A fewe lines signed with his hand is enough for that purpose: these doe meet foure times in the yeare, that is in each quarter.

fer once, to enquire of all the misdemeanors aforesaid: at which daies the Sherife, or his undersherife with his bailifes be there to attend vpon him, who must prepare against that time foure enquestes of xiiii. yeomen a peece of diuers hundreds in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with all. These fise enquestes are sworne before them to enquire of all heretiques, traitours, thestes, murthers, manslaughters, rapes, false moniers, extortioners, riottes, routes, forcible entries, vnlawfull games, and all such thinges as be contrarie to the peace and good order of the Kealme, and to bring in their verdict. If they among themselves vpon their owne knowledge doe finde any culpable, they cause one of the clarkes to make the bill. And if any be there to complain vpon any man for these faults, he putteth in his bill, which bill is presented first to the Iustices sitting vpon the bench, to see if it be conceived in forme of law, which done the complainant doth deliuer it to one of these enquestes, and after the complainant is sworne, he declareth to them what hee can, for the pzoofe of it. And if they find it true they doe nothing but write on y^e backside of it, *billa vera*, as ye would say, *scriptum Verum*: or *accusatio iusta*, or *reus est qui accusatur*: Then hee who is there named is called indicted. The maner of the bill is such, *Inquiratur pro domino rege*.

If they doe not find it true, they write on the backside *ignoramus*, and so deliuer it to the Iustices, of whom it is rent into peeces immediatly: he that is indicted is accompted a lawfull prisoner, and after that time looked moze strenghtly vnto. For this inditement is no conviction: and if hee be indicted, and be not already in Prison, the Sherife if he can finde him, bringeth him into prison: if he cannot finde him, processe is made out against him, to render himselfe prisoner, or else hee

This is not
alwaies and
in all places
observed,
but onely
concerning
the graund
enquest.

The vse of
Capias and
exigens vp-
on indite-
ments is o-
therwise.

They are put
to fines.

shalbe outlawed. So he is called thrée times in diuerse countie dayes to render himselfe to the Lawe. The fourth is called the exigent, by which hee is outlawed not rendering himselfe, as y^e would say; *exactus* or *actus in exilium*. The outlaw looseth all the goodes to the king for his disobedience. But if after hee will render himselfe to answer to the lawe, and shewe some reasonable cause of his absence, manie times of grace his outlawrie is pardoned. These méetings of the Iustices of peace foure times in the yeare, be called quarter sessions, or sessions of enquirie, because that nothing is there determined touching the malefactors, but onely the custodie of them: and this kinde of proceeding which is by inquisition of the twelue men within them selues, and their owne consciences, or by denuncia- tion of him that putteth in his bill to the twelue, is cal- led at the kings suite: and the king is reckoned the one partie, and the prisoner the other. The Iustices of the peace doe méete also at other times by commaundement of the Prince vpon suspition of warre, to take order for the safetie of the shire, sometimes to take musters of harnesse and able men, and sometime to take orders for the excessiue wages of seruantes and labourers, for excesse of apparell, for vnlawfull games, for conuen- ticles and euill order in alehouses, and tauerne for punishment of idle and vagabound persons, and gene- rally as I haue saide, for the good gouernment of the shire, the Prince putteth his confidence in them. And commonly euerie yeare, or each second yeare in the be- ginning of Sommer or afterwards, (for in the warme time the people for the most part be moze unruly) euen in the calme time of Peace, the Prince with his coun- sell chooseth out certaine articles out of penall Lawes alreadie made for to repressse the pride and euill rule of the popular, and sendeth them downe to the Iusti- ces,

ces, willing them to looke vpon those points, and after they haue met together, & consulted among themselues how to order that matter most wisely and circumspectly, whereby the people might be kept in good order and obedience after the law, they deuide themselves by three or foure: and so eche in his quarter taketh order for the execution of the said articles.

And then within certaine space they meete againe and certifie the Prince or his priuate Councell, how they do find the shire in rule and order touching those points and all other disorders. There was neuer in any commonwealth deuised a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwaies as it were in a bridle of good order, and sooner looked vnto that they shuld not offend, than punished when they haue offended. For seeing the chiefe amongst them, their rulers to haue this speciall charge, and doe call vpon it, and if occasion so do present, one or two presently either punished, or sent to prison for disobedience to those olde orders and lawes, they take a feare within themselues, they amend, and doe promise more amendment. So y it is as a new forbus-thing of the good lawes of the Realme, and a continuall repressing of disorders, which doe naturally rest among men.

But as the inuention of this, and the vse and execution thereof is the most benefite that can be deuised for the commonwealth of England: so when it shalbe misused, dissembled with, or be contemned, & be done *pro forma tantum*, and as they term it in France, par mainere d'acquit only, it wil be the present ruine (though not at the first perceiued) of the commonwealth. Of which the fault may be as wel in the commanders for not making good choice, what and how they command, as in y commanded, for not executing that which is commanded.

Of hue and crie and recognifance
taken vpon them that may giue
evidence.

CHAP. 22.

By the olde lawe of England, if any theft, or robbery
be done, if he that is robbed, or hee that seeth or per-
ceiueth that any man is robbed doe leue hue and crie,
that is to say, doe crie and call for aide, and say that a
theft or robberie is done contrarie to the Princes
peace and assurance: the Constable of the Village to
whom hee doth come, and so make that crie, ought to
raise the parish to aid him and seeke the thiefe, and if the
thiefe be not found in that parish, to goe to the next and
raise that Constable, and so still by the Constables
and them of the Parish one after another. This hue
and crie from parish to parish is carried, till the thiefe
or robber be found. That parish which doth not his
duetie, but letteth by their negligence the thiefe to de-
part, doth not onely pay a fine to the king, but must
repay to the partie robbed his dammages. So that eue-
rie English man is a Sergeant to take the thiefe, and
who sheweth himsele negligent therein, doth not only
incorre euill opinion therfore, but hardly shall escape
punishment: what is done with the thiefe or robber
when he is taken, I shall shewe you hereafter. The
same manner is followed if any man be slaine, for
freight the Murderer is pursued of euerie man till he
be taken. So soone as any is brought to the Iustices
of peace by this hue or crie, by the Constable or any o-
ther who doth pursue the malefactor, hee doth examine
the malefactor, and writeth the examination and his

confession: then he doth binde the partie that is robbed, or him that sueth, and the Constable, and so many as can giue euidence against the malefactor to be at the next sessions of goale deliuerie, to giue their euidence for the Queene. He bindeth them in recognisance of x. pound, xx. pound, xxx. pound, xl. pound, or C. pound, according to his discretion, and the qualitie of the crime: which certified vnder his hand, is leuied vppon the recognisance, if they faile of being there.

Of the Coroner.

CHAP. 23.

But if any man, woman, or childe, be violently slaine; the murtherer not knowen, no man ought or dare burie the bodie before the Coroner hath seene it. The Coroner is one chosen by the Prince of the meaner sort of gentlemen, and for the most part a man seene in the lawes of the realme, to execute that office. And if the person slaine (slaine I call here, whosoeuer he be, man, woman, or childe, that violently commeth to his death, whether it be by knife, poison, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner doe come (which for the most part men dare not doe) hee doth cause the bodie to be taken vp againe, and to be searched, and vppon the sight of the bodie so violently come to his death he doth empanell an enquest of twelue men or mo, of those which come next by, be they straungers or inhabitantes, which vppon their othes, and by the sight, or view of the body, and by such informations as they can take, must search howe the person slaine came to his death, and by whom as the doer or cause thereof.

These

These are not inclosed into a streit place, (as I tolde befoze of other enquestes) but are suffered to goe at large, and take a day, sometime after xx. or xxx. dayes, moze or lesse, as the fact is moze euident, or moze kept close, to giue their euidence, at which day they must appeare there again befoze the said Cozoner to giue their verdict. So sometime the person to haue slaine himself, sometime the brother, the husband, the wife, the sister, some of acquaintance or stranger, such as God will haue reuealed, be taken. For whosoever they doe finde as guiltie of the murthor, hee is streight committed to prison, and this is against him in the nature of an indictment, which is not a full condemnation, as ye shall see hereafter.

The empanelling of this enquest, and the view of the body, and the giuing of the verdict, is commonly in the streete in an open place, and in *Corona populi*: but I take rather that this name commeth because that the death of euerie subiect by violence is accounted to touch the Crowne of the Prince, and to be a detriment vnto it, the Prince accounting that his strength, power and Crowne doth stand and consist in the force of his people, and the maintenance of them in securitie and peace.

Of the Constables.

CHAP. 24.

These men are called in the elder bookes of our lawes of the realme *Custodes pacis*, and were at the first in greater reputation than they be now. It may appeare that there was a credite giuen vnto them not altogether vnlike to that which is now giuen to Justices of peace. To this day if any affray chaunce
to

to be made, the Constables ought and will charge them that be at debate, to keepe the Princes peace, and who, soeuer refuseth to obey the constable therein, all the people will set straight vpon him, & by force make him to render himselfe to be ordered. Likewise if anie be suspected of theft, or receiuing, or of murther, or of manslaughter, the constable may take such persons, yea enter into any mans house with sufficient power to search for such men till hee finde them: and if hee see cause, keepe the suspected persons in the stockes, or custodie, till he bring them before a Justice of the peace to be examined. But for so much as euerie little Village hath commonly two Constables, and manye times artificers, labourers, and men of small abilitie be chosen vnto that office: who haue no great experience, nor knowledge, nor authoritie. the Constables at this present (although this they may doe vpon their owne authoritie) yet they seeme rather to be as it were the executors of the commaundement of the Justices of peace. For the Justice of peace as soone as he vnderstandeth by complaint that anie man hath stolen, robbed, slain, or anie seruant, or labourer without licence, hath departed out of his maisters service, or any that liueth idle and suspectly, knowing once in what parish he is, he writeth to the constable of the parish, commaunding him in the Princes name, to bring that man before him: The Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doe finde cause, hee committeth him to the same Constable to conuey him further to the Princes gaole, where the partie must lie till the Justices of Peace doe meete either at their quarter sessions, or at their gaole deliuerie, and that the lawe hath either condemned or acquitted him. These Constables are called in some places Headborowes, in some places Tithingmen, and

One or two constables, headborowes: or tithingmen.

Kinningstable is Regia virgula, the kings rod or wand, signifying the kings power or authority, a representation wherof is the vse of maces and white staves by officers in the commonwealth.

be like to them, who are called Consuls in many towne and villages in Fraunce. The Constables are commonly made and sworn at the Lætes of the Lordes, chosen thereto by the homage, and they keepe that office sometime two, three, or foure yeares, more or lesse, as the parish doth agree. What headborough doth betoken it is easily knowen, our language doth declare him as the head or chiefe of the borough or village: likewise tithingman is the chiefe of the tithing. Constable seemeth to me to come of our old English worde Kinning, which is Kinningstable, as yee would say, a man established by the king, for such thinges as appertaine to pleas of the crowne, and conseruation of the kinges peace, and as I said at the first, were in some more reputation, appoaching to that authoritie which the Iustices of peace now doe hold.

Of the Sessions of gaole deliuerie, and
the definitiue proceedinges in
causes criminall.

CHAP. 5.

HOWE theues and murtherers and other malefactorz against the crowne and the peace are taken and brought into holde to answer to iustice, partly by hue and crie, partly by information, and partly by the diligence of the Iustices of peace and the Constables: and howe at the quarter Sessions they be indicted, or else by the Coroners, yee haue heard before. Enditement (as yee may perceiue by that which is also gone before) is but a former indgement of xii. men which be called enquirers, and no definitiue sentence, but that which in Latine is called *præiudicium*, it doth but shew what opinion the countrey hath of the malefactor: and
therefore

therefoze commonly men be indicted absent, not called to it, noz knowing of it. For though a man be indicted, yet if when hee come to the arrainment, there be no man to pursue further, noz no euidence of witnesse oz other triall and indices against him, hee is without difficultie acquitted. No man that is once indicted can bee deliuered without arrainment: For as twelue haue giuen a pzeiudice against him, so twelue againe must acquit oz condemne him. But if the pzisoner be not indicted, but sent to pzison vpon some suspition oz suspitious behauior, & none doe pursue him to the inditement, first being pzoclaimed thus, A.B. pzisoner standeth here at the barre, if any man can say any thing against him, let him now speake, for the pzisoner standeth at his deliuerance: if no man doe then come, hee is deliuered without any further processe oz trouble, agræing first with the gaoler for his fees. And these be called acquitted by pzoclamation. Twice in euery yeare, the one is commonly in lent what time there is vacation from pleading in Westminster hall, the other is in the vacation in Summer, the Prince doth send downe into euerie shire of England certaine of his Judges of Westminster hall, and some Sergeantes at the lawe with commission to heare and determine ioyntly with the Iustices of the peace all matters criminall and all pzisoners which be in the gaoles. These Judges doe goe from shire to shire till they haue done their circuite of so many shires as be appointed to them for that yeare: at the end of the terme going befoze their circuite, it is written and set vp in Westminster hall on what day and in what place they will be. That day there meeteth all the Iustices of the peace of that shire, the sherrife of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer.

The Sherife hath readie for criminall causes (as I writte before at the Sessions of inquirie) foure, fve, or sixe enquestes readie warned to appeare that day to serue the Prince, and so manie more as he is commanded to haue readie to goe in ciuill matters betwixt priuate men, which they call Nisi prius, because that worde is in the writte.

In the towne house, or in some open or common place, there is a tribuall or place of iudgement, made al oft vpon the highest bench, there sitteth the Judges, which be sent downe in commission, in the middelt. Next them on each side sit the Iustices of Peace, according to their estate and degree. On a lower bench before them, the rest of the Iustices of Peace, and some other Gentlemen or their Clarkes. Before these Judges and Iustices there is a table set beneath, at which sitteth the Custos Rotulorum, or keeper of writs, Theρχetor, the vndersherife, and such clarkes as doe write. At the end of that table there is a barre made with a space for the enquestes, and twelue men to come in when they are called, behind that space another bar, and there stand the prisoners which be brought thither by the Bayler, all chained one to another. When the Cryer cryeth, and commaundeth silence. One of the Judges briefly telleth the cause of their comming, and giueth a good lesson to the people. When the prisoners are called for by name, and bidden to answer to their names. And when the Custos rotulorum hath brought forth their endictmentes, the Judges doe name one or two, or thzee of the prisoners that are indicted, whom they will haue arraigned. There the Clarke speaketh first to one of the prisoners: A. B. come to the barre, hold vp thy hand. The clarke goeth on: A. B. thou by the name of A. B. of such a towne, in such a countie, art endicted, that such a day, in such a place, thou hast stolen
with

with force and armes an horse, which was such ones, of such colour, to such a valor, and carried him away feloniously, and contrarie to the peace of our soueraigne Ladie the Quene. What sayest thou to it, art thou guiltie or not guiltie? If hee will not answer, or not answer directly guiltie or not guiltie, after hee hath bene once or twice so interrogated, he is iudged mute, that is, dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be: he is laid vpon a table, and another vpon him, and so much waight of stones or lead laid vpon that table, while as his bodie be crushed, and his life by that violence taken from him. This death some strong and stout hearted man doth chuse, for being not condemned of felonie, his bloud is not corrupted, his landes nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be foreiudged, that is, condemned for a felon by the lawe. If hee confesse the Indictment to be true, then when he is arraigned, no twelue men go vpon him, there resteth but the Iudges sentence, of the paine of death.

If he pleade not guiltie, as commonly all thæues, robbers and murtherers doe, though they haue confessed the fact befoze the Justice of the peace that examined them, though they be taken with the manner, which in Latine they call in flagranti crimine, howsoeuer it be, if he pleade there not guiltie, the clarke asketh him how hee will be tried, and telleth him he must say, by God and the Countrey, for these be the wordes formall of his triall after indictment, and where the Prince is partie: if the prisoner doe say so, I will be tried by God and the Countrey, and then the Clarke replveth, Thou hast bene indicted of such a crime, &c. Thou hast pleaded not guiltie: being asked how thou wilt be

tried,

tried, thou hast answered by God and by the Countrey. Loe these honest men that be come here, be in the place and stead of the Countrey: and if thou hast any thing to say to any of them, looke vpon them well and nowe speake, for thou standest vpon thy life and death. When calleth hee in the first Juroz. B. C. come to the booke, and so giueth him an oath to goe vpzightly betwixt the Prince and the prisoner, &c. If the prisoner objecteth nothing against him, he calleth another, and so another, till there be twelue or above: and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are vnknownen to him, nor they know not him, as I said being substantial yeomen, that dwell about the place, or at the least in the hundred, or nere where the felonie is supposed to be committed, men acquainted with daily labour and trauell, and not with such idle persons as be readie to doe such mischiefes.

When the enquest is full, and the prisoner hath objected nothing against them, as indeede seldome hee doth, for the cause aboue rehearsed: The clarke sayth to the crier, countes, (in French as ye would say reckon) and so nameth all those that be on the quest. The crier at euery name crieth aloud, one, then two, three, foure and so till the number be full of twelue or more, and then saith good men and true: and then saith aloud: If anie can giue euidence, or can say any thing against the prisoner, let him come now, for hee standeth vpon his deliuerance. If no man come in, then the Judge asketh who sent him to prison, who is commonly one of the Iustices of peace: he (if he be there) deliuereth vp the examination which hee tooke of him and vnderneath the names of those whom hee hath bound to giue euidence: although the malefactor hath confessed the crime to the Iustice of the Peace, and that appeare by his hand
and

and confirmation, the twelue men will acquit the prisoner, but they which should giue euidence pay their recognizance: Howbeit this doth seldome chaunce, except it be in small matters, and where the Justice of peace, who sent the prisoner to the gaole, is away. If they which be bound to giue euidence come in, first is read the examination, which the Justice of Peace doth giue in: then is heard (if hee be there) the man robbed what he can say, being first swozne to say the truth, and after the Constable, and as manie as were at the apprehension of the malefactor: and so many as can say a nie thing, being swozne one after another to say truth. These be set in such a place as they may see the Judges and the Justices, the enquest and the prisoner, & heare them, and bee heard of them all. The Judge after they be swozne, asketh first the partie robbed, if hee knowe the prisoner, and biddeth him looke vpon him: he saith yea, the prisoner sometime saith nay. The partie pursuiuant giueth good ensignes, *verbi gratia*, I knowe thee well enough, thou robbedst me in such a place, thou beatedst me, thou tookest my horse from me, and my purse, thou hadst then such a coate and such a man in thy companie: the theefe will say no, and so they stand a while in altercation, then he telleth al that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can giue a nie *indices* or tokens which wee call in our language euidence against the malefactor. When the Judge hath heard them say inough, hee asketh if they can say any moze: if they say no, then hee turneth his speech to the enquest. Good men (saith hee) ye of the enquest, ye haue heard what these men say against the prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your othe, and to your due tie, and doe that which God shall put in your minds

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to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of ii. or three prisoners: For if they should be charged with more, the enquest will say, my Lord, wee pray you charge vs with no more, it is enough for our memorie. Manie times they are charged but with one or two. At their departing, they haue in writing nothing given them, but the inditement, the Clarke repeating to them the effect of it, and shewing more, that if they finde him guiltie, they shall enquire what goods, lands, and tenements the said person had at the time of the felonie committed: and if they find any, they shall bring it in: if no, they shall say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a bailife to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is saide, or would heare againe some of them that giue euidence, to interrogate them more at full, or if anie that can giue euidence come late: it is permitted that any that is swozne to say the truth, may be enterrogated of them to enforce their consciences. This is to be vnderstood, although it will seeme strange to all nations that doe vse the ciuill law of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is done openly in the presence of the Judges, the Iustices, the enquest, the prisoner, and so many as will or can come so neare as to heare it, and all depositions and witnessses giuen aloud, that all men may heare from the mouth of the depositees and witnessses what is saide. As of this, so is it of al other prisoners after the same sort. By that time
that

that the enquestes for the prisoners be dispatched, it is commonly dinner time, the Judges and Justices goe to dinner, and after dinner to returne to the same place: if the enquest be not ready for the prisoners, they goe to some other enquests of *Nisi prius* which be ciuill matters and priuate, to drine out the time. The enquests haue no sooner agreed vpon their charge one way or other, but they tell the bailife, and pray to be heard, and considering that they be themselves all this while as prisoners as I said befoze, it is no marnell, though they make expedition. The prisoners be sent for againe to the barre, the enquest which hath agreed, is called for ech one of the Iurie by his name, to which hee aunswereth. Then the Clarke asketh if they be agreed, and who shall speake for them. One or mo saith yea. Hee that speaketh for them all is called the foreman, and commonly it is he that is first sworne: then the prisoner is bidden to holde vp his hand. The clarke saith vnto him, Thou art endicted by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guiltie, being asked how thou wouldst be tried, thou saydest by God and thy countrey. These honest men were giuen to thee by God and thy Prince for thy Countrey: Hearken what they say. Then he asketh of the enquest, what say you? Is hee guiltie or not guiltie? The foreman maketh aunswere in one worde, guiltie, or in two, not guiltie: the one is deadlye, the other acquitteth the prisoner. So that neither Judge nor Justice hath to doe, or can reuerse, alter, or chaunge that matter, if they say guiltie. The Clarke asketh what landes, tenements, or goods, the prisoner had at the time of the felonie committed, or at any time after. Commonly it is aunswered, that they knowe not, nor it shall not greatly neede, for the Sherife is diligent enough to enquire of that, for the Princes and
his

his owne aduantage, and so is the ercheatoz also.

Of him whom the twelue men pronounce guiltie, the Judge asketh what he can say for himselfe: if he can reade, hee demaundeth his clargie. For in many felonies, as in theft of Oxen, Sheepe, Money, or other such thinges, which be no open robberies by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Law, that for the first fault the felon shalbe admitted to his Clargie, for which purpose the Bishop must send one with authoritie vnder his seale to be Judge in that matter at euery gaole deliuerie. If the condemned man demaundeth to be admitted to his booke, the Judge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth so well as hee can (God knoweth sometime verie slenderly:) then hee asketh of the Bishops commissarie, *legit vt clericus?* The Commissarie must say *legit* or *non legit*, for these be wordes formall, and our men of law be verie precise in their wordes formall. If he say *legit*, the Judge proceedeth no further to sentence of death: if he say *non*, the Judge forthwith, or the next day proceedeth to sentence, which is done by word of mouth onely. Thou A. hast been endicted of such a felonie, and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Countrey, they haue found thee guiltie, thou hast nothing to say for thy selfe, Lawe is, thou shalt returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. Then hee saith to the Sherife, Sherife doe execution: he that claimeth his clargie, is burned forthwith in the presence of the Judges in the brawn of his hand with a hot yron marked with the letter T. for a theefe, or M. for a mansleaver, in cases where Clargie is admitted, and is deli-
uered

uered to the bishops officer to be kept in the Bishops prison, from whence after a certaine time by another enquest of Clarkes he is deliuered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. Hee whom the enquest pronounceth not guiltie is acquitted forthwith and discharged of prison, paying the gaolers fees: and if he know any priuate man who purchased his indictment, and is able to pursue it, hee may haue an action of conspiracie against him, and a large amendes: but that case chaunceth seldome.

The deliue-
rie to the bi-
shops priſo,
and the pur-
gation is ta-
ken away by
statute.

They must
be two at the
least that
conspired.

Certaine orders peculiar to England, tou-
ching punishments of malefactors.

CHAP. 26.

FOR any felonie, manslaughter, robberie, murther, rape, and such capitall crimes as touch not treason, and *laſam maiestatem*, we haue by the Lawe of England no other punishment, but to hang till they be dead: whe they be dead, euerie man may burie them that will, as commonly they be. Heading, tormenting, dismembzing either arme or legge, breaking vpon the wheele, empaciling, and such cruell torments, as be vsed in other nations by the order of the law, we haue not: and yet as fewe murthers committed as any where: nor it is not in the Judges or the Iustices power, to aggravate or mittigate the punishment of the Law, but in the prince onely and his priue counsell, which is maruellous seldome done. Yet notable murtherers many times by the Princes commaundement, after they be hanged with cord till they be dead, be hanged with chaines while they rotte in the aire.

Quære.

If the wife kill her husband, shee shalbe burned alive. If the seruaunt kill his maister, he shall be drawen on a hurdle to the place of execution: it is called petit treason. Impoysoners, if the person die thereof, by a newe law made in king Henrie the eight's time, shalbe boyled to death: but this mischiefe is rare, and almost vnknown in England. Attempting to impoyson a man, or laying a wait to kill a man, though hee wound him dangerously, yet if death follow not, is no felonie by the law of England, for the Prince hath lost no man, and life ought to be giuen we say, but for life onely.

And againe, when a man is murdered, all be principals, and shall die, euen hee that doth but hold the candle to giue light to the murtherers. For mitigation and moderation of paines, is but corruption of Iudges, as we thinke. Likewise, torment or question, which is vsed by the order of the ciuill law, and custome of other countries, to put a malefactor to excessive paine, to make him confesse of himselfe, or of his fellows, or complices, is not vsed in England, it is taken for seruile. For what can he serue the commonwealth after as a freeman, who hath his body so haled & tormented, if he be not found guiltie, & what amends can be made him? And if he must die, what crueltie is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if he confesse at the iudgement, the triall of the twelue goeth not vpon him: if he denie the fact, & which he said before hindereth him not. The nature of Englishmen is to neglect death, to abide no torment: And therefore he will confesse rather to haue done anything, yea to haue killed his owne father, than to suffer torment: for death our nation doth not so much esteeme as a meane torment. In no place shall you see malefactor's goe more constantly, more assuredly, & with lesse lamentation to their death, than in England.

Again,

Againe, the people not accustomed to see such cruell torments, will pitie the person tormented, and abhorre the Prince and the Judges, who shoulde bring in such crueltie amongst them, and the twelue men y rather absolue him. There is an olde law of England, that if any gaoler shall put any prisoner being in his custodie to any torment, to the intent to make him an approuer, that is to say, an accuser, or Index of his complices, the Gaoler shall die therefore as a felon. And to say the trueth, to what purpose is it to vse torment? For whether the malefactor confesse or no, and whatsoeuer hee saith, if the enquest of twelue doe finde him guiltie, he dieth therefore without delay. And the malefactor, seeing there is no remedie, and that they be his countrie men, and such as hee hath himselfe agreed vnto it, doe finde him worthe death, yeelds for the most part vnto it, and doth not repine, but doth accommodate himselfe to aske mercy of God.

The nature of our Nation is free, stout, hault, prodigall of life and bloud: but contumelie, beatings, seruitude and seruite torment, and punishment, it will not abide. So in this nature and fashion, our ancient princes, and Legislatoys haue nourished them, as to make them stout hearted, couragious, and souldiours, not villaines and slaues, and that is the scope almost of all our policie.

The twelue as soone as they haue giuen their verdict are dismissed to goe whether they will, and haue no manner commoditie and profite of their labour and verdict, but onely doe seruice to the Prince and Common wealth.

110 The Common-wealth

Of treason, and the triall which is vsed

for the higher nobilitie and Barons,

CHAP. 27.

THe same order touching triall by enquest of twelue men, istaken in treason, but the paine is more cruell. First to be hanged, taken downe alive, his bowels taken out, and burned befoze his face, then to be beheaded, and quartered, and those set vp in diuerse places. If any Duke, Marques, or any other of the degree of a Baron, or aboue, Lord of the Parlement be appeached of treason, or anie other capitall crime, he is iudged by his peeres and equals : that is, the yeomanrie doth not goe vppon him, but an enquest of the Lords of the Parlement, and they giue their voice, not one for all, but ech seuerally as they doe in Parlement, beginning at the yongest Lord. And for Judge one Lord sitteth, who is Constable of England for that day. The iudgement once giuen, hee breaketh his staffe, and abdicateth his office. In the rest there is no difference from that aboue wzitten.

Or rather,
high steward
of England.



THE

THE THIRD BOOKE.

Of that which in other countries is called Appellation, or Prouocation, to amend the iudgement, or sentence definitiue, which is thought vniustly giuen in causes criminall.

CHAP. I.



If the enquest of xii. men do seem to the Judges and the Iustices to haue gone too violently against the evidence giuen in matters criminall, either it is, that vpon slender evidence they haue pronounced him guiltie, whom the Judges and most part of the Iustices thinks by the evidence not fully proued guiltie, or for some other cause, doe thinke the person rather worthie to liue than to die. The enquest is neuertheless dismissed: but when the Judges should pronounce the sentence of death vpon the person found guiltie, hee will deferre it, which is called, to repriue the prisoner, (that is to say, to send him againe to prison) and so declare the matter to the Prince, and obtai-
neth after a time for the prisoner his pardon: and as for prouocation or appeale, which is vsed so much in other countreies, it hath no place in England, after sentence giuen by the twelue, whereby the person is found guiltie or not guiltie: but without that repriuing, the sentence is straight put in execution by the sherife.

And

And if they either escape, or die another death, the Sheriffe escapeth not to pay a great fine and ranfome at the Princes mercie: if hauing pregnant euidence neuerthelesse, the twelue do acquite the malefactor, which they will doe sometime, and especially if they perceiue either one of the Iustices or of the Judges, or some other man to pursue too much, and too maliciously the death of the prisoner, and doe suspect some subornation of the witnesse, or of them which doe giue euidence, and sometime if they perceiue the Judge would haue y prisoner escape, and in repeating the euidence do giue the thereof some watchword. But if they doe (as I haue said) pronounce not guiltie vpon the prisoner, against whom manifest witnesse is brought in, the prisoner escapeth: but the twelue not onely rebuked by the Judges, but also threated of punishment, and many times commaunded to appeare in the Starre-chamber, or before the priue counsell for the matter. But this threatening chaunceth oftner than the execution thereof, and the twelue answer with most gentle wordes, they did it according to their consciences, and pray the Judges to be good vnto them, they did as they thought right and as they accorded all, and so it passeth away for the most part. Yet I haue seen in my time (but not in the raigne of the Quene now) that an enquest for pronouncing one not guiltie of treason contrarie to such euidence as was brought in, were not onely imprisoned for a space, but an huge fine set vpon their heads, which they were faine to pay: An other enquest for acquiting an other, beside paying a fine of money, put to open ignominie & shame. But those doings were euen then of many accounted verie violent, tyzannicall, and contrarie to the libertie and custome of the realme of England. Wherefore it commeth verie seldome in vse, yet so muche at a time the enquest may bee corrup

corrupted, that the prince may haue cause with iustice to punish them: For they are men, and subiect to corruption and parcialitie, as others be.

V V hat remedie is, if the sentence be thought vniustly giuen.

CHAP. 2.

I f causes ciuill there is an other order: for if after the matter be pleaded to the issue, and the twelue men thereupon impaneled, the euidence brought and pleaded before them on both the parties, the twelue seeme to be partiall, and to haue giuen sentence contrarie to the euidence shewed vnto them: the partie grieved may bring against them, and the partie for whom the sentence is giuen, a writ of attaint: and whereas before vpon the first quest commonly they all be yeomen, now vpon this attaint must goe xiiii. gentlemen dwelling within the shire, and twelue at the least of the hundreth where the land lyeth. The matter is pleaded againe before the same Iudges. The partie defendand is not onely now hee who claimeth the land, but also all and euerie of the yeomen, who by their verdict did giue it him.

There must in the attaint no more euidence bee brought in, but only that which was brought in and alledged before y first enquest. And if this second enquest of foure and twentie gentlemen doe adiudge as the first did, the plaintife shall not onely loose the land, but also pay a fine to the Prince, and damages to the partie. If this second enquest doe finde that the first enquest haue gone partially, and against the euidence brought in before them, the first enquest is called attainted,

No more euidence on the behalfe of the plaintife, but of the defendand there may.

and

and

The statute
of 23. Henry
8. doth not
abolish co-
mon law, but
giueth a
more profi-
table for the
plaintife.

and accounted as periured and infamed. The Prince had before the waste of all their landes and possessions with other punishmentes, which at this present by a lawe made by Parlement in the time of king Henry the eight is abolished, and nowe by that lawe or act of Parlement, beside other punishment, each of the quest attainted paieth vnto the Prince and Partie five pound, if it be vnder fortie poundes: and if aboue, then twentie pounds. Attaints be verie seldome put in vze, partly because the Gentlemen will not meet to slander and deface the honest yeomen their neighbours: so that of a long time, they had rather paie a meane fine than to appeare and make the enquest. And in the meane time they will intreate so much as in them lieth the parties to come to some composition and agreement among the selues, as lightly they doe, except either the corruption of the enquest be too euident, or the one partie is too obstinate and head-strong. And if the gentlemen do appeare, gladlier they will confirme the first sentence, for the causes which I haue said, than goe against it. But if the corruption be too much euident, they wil not stick to attaint the first enquest: yet after the Gentlemen haue attainted the yeomen, if before the sentence bee giuen by the Judge (which ordinarily for a time is deferred) the parties be agreed, or one of them be dead, the attaint ceaseth.

If at anie time before the sentence be giuen or put in execution, there be found some such error in the writ, in the processe, or forme (as our lawyers be verie precise and curious of their formes) that it may be reuocable, it is brought afresh to the disputation by a writ of error, and all that is done reuered. But that is common to all other Countries, where the ciuill lawe is vsed, which they call *de nullitate processus* and serueth both in England and in other places aswell in causes criminall

criminall, as ciuill. Other kinde of appellation to re-
 uoke processe, and to make them of short, long : of
 long, infinite: which is vsed by the ciuill law, we haue
 not in our common law of England. By supplication to
 the Prince and complaint to the Chancelloz vppon
 supposall of losse or lacke of euidence, or too much fa-
 uour in the countrey, and power of the aduersarie,
 there is in our countrey as wel as theirs both stopping
 and prolonging of Justice. For what will not busie
 heades and louers of trouble neuer being satisfied, in-
 uent in anie Countrey to haue their desire, which is
 to bere their neighbours, and to liue alwaies in disqui-
 et: Men euen permitted of God like flies, and lice, and
 other vermine to disquiet them who woulde employ
 themselves vppon better businesse and more necessary
 for the commonwealth: these men are hated, and
 feared of their neighbours, loued and aided of them
 which gaine by processe, and ware sat by the expence
 & trouble of other. But as these men ordinarily spend
 their owne thzift, and make others against their wils
 to spend theirs: so sometime being thoroughly knowen,
 they doe not onely liue by the losse like euill husbands,
 but beside rebuke and shame, by the equitie of y^e prince
 and Courts soueraigne, they come to be extraordinari-
 ly punished, both corporally, and by their purse, which
 thing in my minde is as royall and princely an act, and
 so beneficiall to the Commonwealth, as in so small a
 matter a king or queene can doe, for the repos and good
 education of their subiects.

Of that which in England is called
appeale, in other places ac-
cusation.

CHAP. 3.

If any man hath killed my father, my sonne, my wife,
my brother, or next kinsman, I haue choice to cause
him to be indicted, by giuing information to the enquest
of enquirie, (although hee chaunce to escape the Con-
stable or Iustices handes, and therefore not to be ap-
prehended) and thereupon to procure him to be out-
lawed, or else within a yeare and a day I may enter
my appeale, that is, mine accusation against him: If I
began first to pursue him by information or denuncia-
tion to enditement, I am now no partie but y^e Prince,
who for his duetie to God and his commonwealth and
subiectes, must see iustice executed against all malefac-
tors and offenders against the Peace, which is cal-
led God and his, and doth in such maner as I haue said
before. If I leaue that and will appeale, which is, pro-
fer my accusation against him who hath done to mee
this iniurie, the defendant hath this aduantage, to
put himselfe to the Iurie, which is to that which before
is said to haue that issue and triall by God and his coun-
try, whereof the fashion I haue at large declared: or
to demand the triall by battle, wherein both the par-
ties must either themselves in person, or else finde o-
ther for them, who be called in our Lawe Champions
or Champions, some doth interprete them *αθλητάς*, be-
cause they be men chosen, fat, lustie, fit to the seate, or
as the French doe terme them *adroicts aux armes*,
which shall fight it out by *πορομαχία*, or as nowe they doe
call

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call it *duellum*, or the Campe, which shall haue all thinges equall: but according as Mars giueth the vic-
torie, so the Law is iudged, the one as *peractus reus*, the
other is *calumniator* to suffer the paine of death. So
that by the great assise there is no appellation but
death or life to the defendant, but this is more daun-
gerous and equall, for the one or the other must die.
So it is not in the graund assise, for the *reus* or defen-
dant is onely in daunger of death. Short it is, from
day to sunne set, the quarrell is ended, or sooner who
hath the better fortune. This seemeth verie militarie
(as in maner all our pollicie of England) and to haue
as small to doe with Lawyers as with Philosophies,
quickly to dispatch, and for the rest to returne, each
man to his businesse, to serue the Commonwealth in
his vocation. The Popes of Rome, and men of the
church who of long time haue had dominion in our con-
sciences, and would bring thinges to a more modera-
tion, haue much detested this kinde of triall and iudge-
ment, as reason is euery man misliketh that which
is not like to his education, and colde reasoning by
Theologie and Philosophie: they I say much mis-
like manie thinges done necessarie in hote policie.
At the least a commonwealth militarie must aduen-
ture many thinges to keepe it in quiet, which cannot
seeme so precisely good to them which dispute thereof in
the shadowe and in their studies. Howsoeuer it be, this
kinde of triall a long time hath not been vsed. So that
at this time we may rather seeke the experience of it
out of our histories of time passed, than of anie viewe
or sight thereof, of them which are now aliue. Neuer-
thelesse the Law remaineth still, and is not abolished,
and if it shall chauce the murthrer or mansleer (the
one we call him that lieth in waite, and as they terme
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dant:

other who by casuall falling out and sodaine debate and
choler doth the same which waie soeuer it be done) if
hee that hath slaine the man, hath his pardon of the
Prince, as occasion or the fauour of the Prince may so
present that he may haue it, yet the partie grieved hath
these two remedies, I say to require iustice by grand
assise, or battle vpon his appeale and priuate reuenge,
which is not denied him. And if the defendant either
by great assise or by battle be conuincd vpon that ap-
peale, he shall die, notwithstanding the Princes par-
don. So much fauourable our Princes be, and the law
of our realme to iustice and to the punishment of bloud
violently shed.

Of the court of Starre Chamber.

CHAP. 4.

There is yet in England another Courte, of the
which that I can vnderstand there is not the like in
anie other Countrey. In the Terme time (the Terme
time as I haue heretofore shewed, I call the time and
those daies when the Law is exercised in Westminster
hall, which as I haue saide, is but at certaine times
and Termes) euerie weeke once at the least (which is
commonly on Fridaies, and Wednesdaies, and the
next day after that the Terme doth ende) the Lord
Chauncelloz, and the Lordes, and other of the priue
Counsell, so manie as will, and other Lords and Ba-
rons which be not of the priue Counsell, and be in the
towne, and the Judges of England, speciallie the two
chiefe Judges, from ix. of the clocke till it be a xi. do sit in
a place which is called the Starre chamber, either be-
cause it is full of windowes, or because at the first all
the

the roose thereof was decked with images of starres gilted. There is plaints heard of riots. Riot is called in our English terme oꝛ speech, where anie number is assembled with force to do any thing: and it had the beginning, because that our being much accustomed either in foraine warres, in Fraunce, Scotland, oꝛ Ireland, oꝛ being ouermuch exercised with ciuill warres within the Realme (which is the fault that falleth ordinarily amongst bellicous nations) where by men of warre, Captaines and Souldiours become plentifull: which when they haue no externe seruice wherewith to occupie their busie heads and hands accustomed to fight and quarrell, must needes seeke quarrels and contentions amongst themselves, and become so readie to oppresse right among their neighbours, as they were wont before with praise of manhood to bee in resisting iniurie offered by their enemies. So that our Nation vled hèreunto, and vpon that moze insolent at home, and not easie to be gouerned by Law and politicke order, men of power beginning manie fraies, and the stronger by factions and parties offering too much iniurie to the weaker, were occasions of making good Lawes. First of retainers, that no man shuld haue aboue a number in his Liuerie oꝛ retinue: then of the enquire of routes and riots at euerie Sessions, and of the lawe whereby it is pꝛouided that if anie by force oꝛ by riot enter vpon anie possessions, the Iustices of the peace shall assemble themselves and remoue the force, & within certain time enquire therof. And further, because such thinges are not commonlie done by meane men, but such as be of power and force, & be not to be dealt withall of euerie man, noꝛ of meane gentlemen: if the riot be found and certified to the kings Counsell, oꝛ if otherwise it be complained of, the partie is sent for, and hee must appeare in the Warre chamber

Sent for by
Sub poena.

chamber, seeing (except, the presence of the Prince onlie) as it were the maiestie of the whole Realme before him, being neuer so stout: hee will be abashed: and being called to answer (as hee must come of what degree soeuer hee be) hee shall bee so charged with such grauitie, with such reason, and remonstrance, and of those chiefe personages of England, one after another handling him on that sort, that what courage soeuer hee hath, his heart will fall to the ground, and so much the more, when if hee make not his answer the better, as seldome he can so in open violence, hee shall be commanded to the Fleet, where he shall be kept in prison in such sort as these Judges shall appoint him, lie there till hee be wearie aswell of the restraint of his libertie, as of the great expences, which hee must there sustaine, and for a time be forgotten, whiles after long suite of his friends, he will be glad to be ordered by reason. Sometime as his desertes be, he payeth a great fine to the Prince, besides great costes and dammages to the partie, and yet the matter wherefore hee attempteth this riot and violence is remitted to the common lawe. For that is the effect of this Court to brydle such stout Noble men, or Gentlemen which would offer wrong by force to anie maner men, and cannot be content to demaund or defend the right by order of Lawe. This Court beganne long before, but tooke great augmentation and authoritie at that time that Cardinall *Wolsey* Archbishope of *Yorke* was Chauncelour of England, who of some was thought to haue first deuised that Court, because that hee after some intermission by negligence of time, augmented the authoritie of it, which was at that time maruellous necessarie to doe, to repress the insolencie of the noble men and gentlemen of the South partes of England, who being farre from the king and the

seate

seate of iustice made almost as it were an ordinarie warre among themselves, and made their force their Lawe, banding themselves with their tenants and seruantes to doe or reuenge iniurie one against another as they listed. This thing seemed not supportable to the noble prince king Henrie the eight: and sending for them one after another to his Court to answer before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and bin well disciplined as well by wordes, as by flecting a while, and thereby their purse and courage somewhat asswaged, they beganne to range themselves in order, and to vnderstand that they had a Prince who would rule his subiectes by his lawes and obedience. Sith that time this court hath been in more estimation, and is continued to this day in manner as I haue said before.

The Judges of this Court are the Lord Chauncelour, the Lord Treasorer, all of the Queenes Maiesties Counsell, the Barons of this land.

The officers therein, are a Clarke, three Atturneys, an Examinoe.

The Clarke keepeth the recozdes, rules, entries, orders, and decrees, made in this Court.

The three atturnies are for the plaintife, and for the defendant to frame their complaints, and answers, and make their matter apt to be heard for the Lords.

The Examinoe taketh the depositions of the witnesses of both sides to the prooofe or disprooofe of the cause.

The order of proceeding to iudgement is by assent of voices, and open yeelding their minde in court, the maiour part being preferred for sentence.

The punishment most vsuall, is imprisonment, pillorie, a fine, and manie times both fine and imprisonment,

sonment.

The processe is a subpena, an attachment, a proclamation of rebellion, and a commission of rebellion.

The subpena is in maner of a libell or precept.

The Proclamation and commission of rebellion serueth when the partie is stubborne, hauing made contempt, and commeth not in by the former processe.

The Messengers of this court are the warden of the Fleete: or the Sergeantes at armes.

The Matters belonging most commonly, are by statutes, as is taking away of Maides within age against their parents or gardians will. See Anno. 4. & 5. Phil. & Mariae cap. 18. All notable forgeries, counterfeiting letters or priuie tokens. See Hen. Anno. 33. cap. 1. An. 5. Eliz. cap. 11. flandering of nobles, and seditious newes. See R. 2. Anno. 2. Cap. 5. Anno. 1. & 2. Phil. & Mariae Cap. 3. Anno. 2. 3. Eliz. Cap. 7. All notable Riots and unlawfull assemblies. See Anno 1. Eliz. cap. 17. And all the titles of Riotes in Kastals abridgement, all notable deceits, and all kinde of cousenage, &c.

Of the Courtes of V Vardes and Liueries.

CHAP. 5.

HE whom we call a Ward in England, is called in Latine *pupillus*, and in Greeke *ὑπάρδος*. The gardian is called in Latine *tutor*, in Greeke *ἐκπαιστής*. A Ward or infant is taken for a childe in base age, whose father is dead. The Romanes made two distinctions *pupillum* & *minorem*, the one to xiiii. yeare old, the other was accounted from thence to xxv. And as *pupillus* had *tutorem*, so *minor* had *curatorem* till he came to the age of xxv. These

tutors

tutors or curators were accountable for the revenues of the pupils minors lands, & great provision & manie lawes and orders be made for them in the booke of the ciuill law, for rendring iust and true accounts. So that to be a gardian or tutor was accounted among them to be a charge and trouble, a thing subiect to much encumbrance and small profite, so that diuers meanes were sought for, to excuse men from it. With vs this is cleane contrarie, for it is reckoned a profite to haue a warde. For the Lord of whom the Warde doth holde the land, so soone as by the death of the Father the Childe falleth Ward vnto him, he seyleth vpon the body of the Ward, and his landes, of which (so that hee doth nourishe the Ward) hee taketh the profites without accountes, and beside that, offering to his Ward couenable marriage without dispergment before the age of xxi. yeares if it be a man, of fourtene if it be a woman. If the Warde refuse to take that marriage, he or she must pay the value of the marriage, which is commonly rated according to the profite of his landes. All this while I speake of that which is called in French garde noble, that is, of such as hold lands of other by knightes seruice, for that is another kinde of seruice which wee call in French gard returier, we call it gard in socage, that is of such as doe not holde by knight seruice, but by tenure of the plough. This Wardship falleth to him who is, next of the kinne, and cannot inherite the land of the Warde, as the vncle by the mothers side, if the land doe discend by the father, and of the fathers side, if the land discend by the mother. This gardian is accountable for the revenues and profites of the land, as the tutor by the ciuill lawe to the warde or pupil so soone as he is of full age.

Guardian in
Chivalrie, &
gardian in
Socage.

The man is not out of Wardship by our lawe till xxi. yeare olde, from thence he is reckoned of full age, as

well as in the Romane Lawes at xxv. The woman at xiiii. is out of warde, for she may haue an husband able to doe knightes seruice, say our Bookes. And because our wiues be in the power (as I shal tell you hereafter) of their hus bandes, it is no reason, she should be in two diuers gards.

Many men doe esteeme this wardship by knightes seruice verie vnreasonable and vniust, and contrarie to nature, that a Freeman and Gentleman shoulde be bought and sold like an horse or an ore, and so change gardians as maisters and Lordes: at whose gouernement not onely his bodie but his landes and his houses should be, to be wasted and spent without accounts, and then to marrie at the will of him, who is his naturall lord, or his will who hath brought him to such as he like not peradventure, or else to pay so great a raunsome. This is the occasion they say, why many gentlemen be so euill brought vp touching vertue and learning, and but onely in deintinesse and in pleasure: and why they be married verie yong, and befoze they be wise, and many times doe not greatly loue their wiues. For when the father is dead, who hath the naturall care of his childe? not the mother, nor the vncle, nor the next of kinne, who by all reason would haue most naturall care to the bringing vp of the infant and *minor*, but the Lord of whom he holdeth his land in knightes seruice, be it the king or queene, duke, marques, or any other, hath the gouernment of his bodie, and marriage, or else who that bought him at the first, second, or third hand. The Prince as hauing so many, must needes giue or sell his wardes away to other, and so hee doth. Other doe but seeke which way they may make most aduantage of him, as of an Ore, or other Beaste. These all (say they) haue no naturall care of the Infant, but of their owne gaine, and especially the

the buyer will not suffer his warde to take anie great paines, either in studie, or anie other hardnesse, least he should be sicke & die, before he hath married his daughter, sister, or cousin, for whose sake he bought him : and then all his money which hee paide for him shoulde bee lost . So he who had a father, which kept a good house, and had all thinges in order to maintaine it , shall come to his owne , after hee is out of wardship, woodes decayed, houses fallen downe, stocke wasted and gone, Lands lent forth and plowed to the barren, and to make amendes, shall pay yet one yeares rent for reliefe, and sue ouster le main, beside other charges , so that not of manie yeares , and peradventure neuer hee shall be able to recouer, and come to the estate where his father left it . This as it is thought was first graunted vpon a great extremitie to king Henry the 3. for a time vpon the warre which hee had with the Barons , and afterward increased, and multiplied to more and more persons and grieuances, and will be the decay of the nobilitie and libertie of England . Other againe say , the warde hath no wrong, for either his futher purchased the land, or it did not discend vnto him from his ancestors with this charge . And because hee holdeth by knightes seruice, which is in armes and defence, seeing that by age hee cannot doe that whereto hee is bound by his land , it is reason hee answere that profite to the Lord , whereby hee may haue as able a man to doe the seruice . The first Knightes in Rome , those that were chosen *equites Romani* had *equum publicum* on which they serued, and that was at the charge of Widowes and Wardes as appeareth by Titus Linius ; because that those persons coulde not do bodily seruice to the Commonwealth . Wherefore this is no newe thing, but thought reasonable in that most wise common-wealth, and to the prudent king Seruius Tullius,

But the lord shall be punished for the wast, by losse of the warde: or treble damages, if that suffice not.

As for the education of our common-wealth, it was at the first militaire, and almost in all things the scope and designe thereof is militaire. Yet was it thought most like, that noble men, good knightes, and great captains would bring up their wardes in their owne seates and vertues, and then marrie them into like race and stock where they may finde and make friendes who can better looke to the education or better skill of the bringing up of a Gentleman, than he who for his higher nobilitie hath such a one to holde of him by knightes service, or would do it better than he that looketh or may claime such service of his warde, when age and yeares will make him able to doe it. That which is saide that this manner of Wardshippe beganne in the time of King Henrie the third, cannot seeme true. For in Normandie and other places of Fraunce the same order is.

And that Statute made in King Henry the thirds time touching wardes, to him that will wey it well, may seeme rather a qualification of that matter, and an argument that the fashion of wardship was long before: but of this matter an other time shall be more convenient to dispute. This may suffice to declare the maner of it.

The Judge in this Court is the maister of the Wardes.

Officers are the Atturney of the Wardes for the Quene.

The Surueyor, the Auditor, the Treasorer, the Clarke, two common Attornies, inferiour officers, also messengers, and Pursuyantes.

The Atturney for the Wardes is alwaies for the Quenes right, and assistant with the maister of the Wardes.

The Surueior is he that hath the allowing of euery
Liuerie

Livirie that is sued out.

The Auditor taketh the accompt and causeth processe to be made.

The Treasorer receiveth the money due to her Maestie.

The Clarke is wziter of the recordes, and wziter of the decrees, processe and orders of the Court.

The matters of this court are all benefites that may come vnto her Maestie, by guard, by marriage, pzeuuer seison and reliefe.

The generall processe in this court is a commission, a processe in maner of a proclamation, warning the partie or parties to appeare befoze the maister of y wards. More speciall processe belonging to this Court, are a Diem clausit extremum, a Deuenerunt, a melius inquirendum, a Datum est nobis intelligi, a Quæ plura. Of the nature of these, see Stanfords booke of the kings prerogative.

Out of this court are the Livuries sued, and committed to the Clarkes of the pettie bagge, officers in the Chauncerie.

When the heire hath proued his age, and sued his liuery, then he must doe homage to that is the Deputie of the Prince for that purpose, and then must pay a fine or fee to the Lord priuie Seale.

The Duchie Court.

CHAP. 6.

The Duchie Court of Lancaster is also the Quenes court of Recorde. In it are holden all pleas real and personall which concerne anie of the Duchie Landes, now in her Maesties handes and parcel of her crowne: but

but severed in Court and iurisdiction.

The Judge in this Court is the Chancelor assisted by the Atturney of the Duchie for the Queene, the clarke of the Court, diuers Surueyors, two common Attur-
neies, diuers auditors, two assistants, the Sergeant of
her Maiestie.

The Chaunceloz is a Judge of the Court to see ius-
tice administred betwene her Maiestie and her sub-
iectes, and betwene partie and partie.

The Atturney is to maintaine the Quenes right,
and is assistant to the Chaunceloz, and sheweth him
what the lawe is.

The Clarke keepeth the Rolles and recozdes, and
maketh the processe.

The Surueyors are diuers, one more principall: they
suruey the quenes landes within the Duchie.

The Auditors are diuers: one more principall, they
are to accompt and make the order of the receits within
the Duchie.

The common Atturneys are for the suitors that haue
cause in action within the Court.

The Assistantes are two Judges at the Common
law that are to aid them in difficult pointes of the law.

The Sergeant for the Queene, is a learned Coun-
selloz, appointed to be of her Maiesties Counsell for her
right.

There is also belonging to this court a Vice-chan-
celoz, that serueth for the Countie Palatine of Lanca-
ster, he maketh all originall processe within his liber-
tie, as doth the Lord Chanceloz of England for the
Chancerie.

The processe of the Countie Pallatine, is a *Sub pe-
na*, as in the Chauncery.

Of

The Court of requestes.

CHAP. 7.

This Court is the Court wherein all suites made to her Maiestie by way of supplication or petition are heard and ended, neither should it hold plea of anie other matters then such. And this is called the poore mans court, because there he should haue right without paying any money: and it is called also the Court of Conscience.

The Judges in this Court are the maisters of Requestes, one for the common lawes, the other for the ciuill lawes.

The Officers in this court, are the Register, the Examinoz, thre Attornies, one messenger or Pursuiuant.

The Examinoz is hee that apposeth the witnesses by oth and recozdeeth their depositions.

The Attornies serue for the plaintife and defendant, to frame their complaints and answeres.

The Pursuiuant is an officer in this Court, to bring any man before the Judges whom they shall name.

The matters in this Court at this day, are almost all suites that by colour of equitie or supplication made to the Prince, may be brought before them: properly all poore mens suites which are made to her Maiestie by supplication.

The Proccesses in this court, are a priuie seale, proclamation of rebellion. The nature of these proccesses is, as was said before in the Court of Starre chamber.

R

Of

THe wiues in England be as I said *in potestate maritorum*, not that the husband hath *vite ac necis potestatem*, as the Romans had in the old time, of their children, for that is onely in the power of the Prince, and his lawes, as I haue said befoze, but that whatsoeuer they haue befoze marriage, as soone as marriage is solemnised, is their husbands, I meane of money, plate, iewels, cattaille, and generally all moueables. For as for land and heritage followeth the succession, and is ordered by the Law, as I shall say heereafter: and whatsoeuer they get after marriage, they get to their husbandes. They neither can giue nor sell anie thing eyther of their husbandes, or their owne. Theirs no moueable thing is by the law of England *constantimatrimonio*, but as *peculium serui aut filij-familias*: and yet in moueables at the death of her husband she can claime nothing, but according as hee shall will by his Testament, no more than his sonne can: all the rest is in the disposition of the executors, if he die testate. Yet in London and other great cities they haue that lawe and custome, that when a man dieth, his goodes be diuided into three partes. One third is imploied vpon the buriall and the bequeastes which the testator maketh in his testament. Another third part the wife hath as her right, and the third part is the dew and right of his children, equally to be diuided among them. So that a man there can make testament but of one third of his goodes: if hee die intestate, the funerals deducted, the goodes be equally diuided betwene the wife and the children.

By the common Law of England if a man die intestate, the Ordinarie (which is the Bishop by common intendment) sometime the Archdeacon, Deane, or Prebendarie, by priuiledge and prescription, doth commit the administration of the goodes to the widowe or the childe, or next kinsman of the dead, appointing out portions to such as naturally it belongeth vnto, and the Ordinarie by common vnderstanding, hath such grauitie and discretion as shalbe for so absolute an authoritie for the most part, following such diuision as is vsed in London, either by thirdes or halfes. Our forefathers newly converted to the Christian faith had, such confidence in their pastors and instructors, and tooke them to be men of such conscience, that they committed that matter to their discretion: and belike at the first they were such as would seeke no priuate profite to themselves thereby: that being once ordained hath still so continued. The abuse which hath followed was in part redressed by certaine actes of Parlement made in the time of king Henrie the eight, touching the probate of Testaments, committing of administration & mortuaries. But to turn to the matter which we now haue in hand, the wife is so much in the power of her husband, that not onely her goodes by marriage are streight made her husbandes, and shee looseth all her administration which shee had of them: but also where all English men haue name and surname, as the Romanes had, Marcus Tullius, Caius Pompeius, Caius Iulius, whereof the name is given to vs at the front, the surname is the name of the gentilitie and stocke which the sonne doth take of the father alwaies, as the olde Romanes did, our daughters so soone as they be married lose the surname of their father, and of the family and stocke whereof they doe come, and take the surname of their husbandes, as transplanted from their

familie into another. So that if my wife was called before Philip Wilforde by her owne name and her fathers surname, so soone as shee is married to me, she is no more called Philip Wilford but Philip Smith, and so must she write and signe: and as she chaungeth husbandes, so she chaungeth surnames, called alwaies by the surname of her last husband. Yet if a woman once marrie a Lord or a knight, by which occasion she is called my Ladie, with the surname of her husband, if hee die, and she take a husband of a meaner estate, by whom shee shall not be called Ladie (such is the honour wee doe giue to women) she shall still be called Ladie with the surname of her first husband, and not of the second.

Yet she is no
Ladie by the
common
law, although
so called of
courtesie,

I thinke among the olde Romans those marriages which were made *per coemptionem in manum*, and *per aes and libram* made y^e wife in manu & potestate viri, wheres of also we had in our olde lawe and ceremonies of marriage, a certaine memorie as a viewe and *vestigium*. For the woman at the Church doze was giuen of the Father, or some other man of the next of her kinne into the handes of the husband, and hee laide downe gold and siluer for her vpon the booke, as though hee did buy her, the Priest belike was in steed of Lipripeus: our marriages be esteemed perfect by the law of England, when they be solemnised in the Church or Chappell, in the presence of the Priest and other witnesses. And this only maketh both the husband and the wife capable of all the benefites which our lawe doth giue vnto them and their lawfull children. In so much that if I marry the Widowe of one lately dead, which at the time of her husbandes death was with childe, if the childe be borne after marriage solemnised with me, this childe shall be my heire, and is accounted my lawfull sonne, not his, whose childe it is indeede: so precisely wee doe take

take the letter where it is said, *pater est quem nuptiae demonstrant*. Those waies and meanes which Iustinian doth declare to make bastardes to be lawfull children, muliers or rather melieurs (for such a Terme our lawe vseth for them which be lawfull children) be of no effect in England: neither the Pope nor Emperour nor the Prince himselve neuer could there legitimate a bastard to enioy any benefite of our Law, the Parliament hath onely that power.

Although the wife be (as I haue written before in *manu & potestate mariti*, by our Lawe, yet they be not kept so streit as in mewe, and with a garde as they be in Italie and Spaine, but haue almost as much libertie as in Fraunce, and they haue for the most part all the charge of the house and household (as it may appeare by Aristotle and Plato, the wiues of the Greeks had in their time) which is indeed the naturall occupation, exercise, office and part of a wife. The husband to meddle with the defence either by lawe or force, and with all forren matters which is the naturall part and office of the man, as I haue written before. And although our Lawe may seeme somewhat rigorous toward the wiues: yet for the most part they can handle their husbandes so well and so dulcely, and specially when their husbandes be sicke, that where the law giueth them nothing, their husbandes at their death of their good will giue them all. And few there be that be not made at the death of their husbandes either sole or chiefe executrices of his last will and testament, and haue for the most part the gouernment of the Children and their portions: except it be in London, where a peculiar order is taken by the Citie much after the fashion of the ciuill Law.

All this while I haue spoken onely of moueable goods. If the wife be an inheritrice and bring land with her

It is avoidable after the husbandes death, except it be for xxi. yeares or three liues according to the statute, or except they leuie a fine.

her to the marriage: that land descendeth to her eldest sonne, or is diuided among her daughters. Also the manner is, that the land which the wife bringeth to the marriage, or purchaseth after wardes, the husband cannot sell nor alienate the same, no not with her consent, nor shee her selfe during the marriage, except that shee be sole examined by a Judge at the common lawe: and if he haue no childe by her and she die, the land goeth to her next heires at the common lawe: but if in the marriage hee haue a childe by her, which is heard once to crie, whether the childe liue or die, the husband shall haue the vsufruite of her landes, (that is the profite of them during his life) and that is called the courtesie of England.

Likewise if the husband haue any land, either by inheritance descended, or purchased and bought, if hee die before the wife, she shall haue the vsufruite of one third part of his lands. That is, she shall hold the one third part of his landes during her life as her dowrie, whether he hath childe by her or no. If he hath anie childzen the rest descendeth streight to the eldest: if he hath none, to the next heire at the common law: and if shee mislike the diuision, she shall aske to be indowed of the fairest of his landes to the third part.

This which I haue written touching marriage and the right in moueables and vnmoueables which cometh thereby, is to be vnderstode by the common lawe when no priuate contract is more particularly made. If there be anie priuate pacts, couenants and contracts made before the marriage betwixt the husband and the wife, by themselves, by their parents, or their friends, those haue force and be kept according to the firmitie and strength in which they are made, And this is enough of wifes and marriage.

Of

Of Children.

CHAP. 9.

Our Childzen be not *in potestate parentum*, as the childzen of the Romans were: but as soone as they be *puberes*, which we call the age of discretion, before that time nature doth tel they be but as it were *partes parentum*, that which is theirs they may giue or sell, and purchase to themselves either landes and other mouesables the father hauing nothing to doe therewith. And therefore *emancipatio* is cleane superfluous, we knowe not what it is. Likewise *sui heredis* complaints, *de inofficioso testamento* or *præteritorum liberorum non emancipatorum*, haue no effect nor vse in our lawe, nor we haue no maner to make lawfull Childzen but by marriage, and therefore we know not what is *adoptio*, nor *arrogatio*. The testator disposeth in his last will his mouesable goodes freely as he thinketh meete and conuenient without controlement of wife or childzen. And our testaments for goodes moueable be not subiect to the ceremonies of the ciuill lawe, but made with all libertie and freedome, and *iure militari*. Of landes, as yee haue vnderstode before, there is difference: for when the owner dieth, his land descendeth onely to his eldest sonne, all the rest both sonnes and daughters haue nothing by the common lawe, but must serue their eldest brother if they will, or make what other shift they can to liue: except that the father in life time doe make some conueiance and estates of part of his land, to their vse, or else by deuise, which word amongst our lawiers doth betoken a testament witten, sealed and deliuered in the life time of the testator before witnesse: for without those ceremonies a bequeast of lands is not available.

availeable. But by the common Law, if he that dieth had no sonnes but daughters, the land is equally diuided among them, which portion is made by agrément or by lotte. Although (as I haue said) ordinarily and by the common lawe, the eldest sonne inheriteth all the landes, yet in some countreys all the sonnes haue equall portion, and that is called gavelkind, and is in many places in Kent. In some places the youngest is sole heire: and in some places after another fashion. But these being but particular customes of certain places and out of the rule of the common law, doe little appertaine to the disputation of the policie of the whole Realme, and may be infinite. The commonwealth is iudged by that which is most ordinarily and commonly done thzough the whole Realme.

Of Bondage and Bondmen.

CHAP. IO.

After that wee haue spoken of all the sortes of freemen according to the diuersitie of their estates and persons, it resteth to say somewhat of bondmen, which were called *serui*, which kinde of people and the disposition of them and about them doth occupie the most part of Iustinians Digestes, and Code. The Romanes had two kindes of bondmen, the one which were called *serui*, and they were either which were bought for money, taken in warre, left by succession, or purchased by some other kind of lawfull acquisition, or else bozne of their bond women and called *vernæ*: all those kinde of bondmen be called in our lawe villaines in grosse, as ye would say immediatly bond to the person and his heires. Another they had (as appeareth in Iustinians time) which they called *adscriptitiij glebæ* or *agri censiti*.

These

These were not bond to the person, but to the mannoꝝ
oꝝ place, and did follow him who had the mannoꝝ, and
in our law are called villaines regardantes, foꝝ because
they be as members, oꝝ belonging to the mannoꝝ oꝝ
place. Neither of the one soꝝt noꝝ of the other hane we
any number in England. And of the first I neuer knew
any in the Realme in my time: of the second so fewe
there be, that it is not almost woꝝth the speaking, but
our lawe doth acknowledge them in both those soꝝtes.

Manumission of all kinde of villaines oꝝ bondmen
in England, is vsed and done after diuers soꝝtes, and
by other, and moꝝe light and easie meanes than is pre-
scribed in the ciuill lawe: and being once manumitted,
he is not libertus manumittentis, but simply liber:
howbeit, since our Realme hath receiued the Chꝛisti-
an religion, which maketh vs all in Chꝛist bꝛethꝛen,
and in respect of God and Chꝛist, conseruos, men be-
ganne to haue conscience to hold in captiuitie, and such
extreme bondage, him whom they must acknowledge
to be his bꝛother, and as wee vse to terme him Chꝛi-
stian, that is, who looketh in Chꝛist, and by Chꝛist to
haue equall poꝝtion with them in the Gospel and sal-
uation.

Upon this scruple, in continuance of time, and by
long succession, the holy fathers, Monkes and Friers,
in their confession, and specially in their extream and
deadly sicknesses, burdened the consciences of them
whom they had vnder their handes: so that tempoꝝall
men by little and little, by reason of that terroꝝ in their
conscience, were glad to manumitte all their villains:
but the said holy fathers, with the Abbots and Bꝛiours,
did not in like soꝝt by theirs, foꝝ they had also consci-
ence to empouerish and dispoyle the Churches so much
as to manumit such as were bond to their Churches, oꝝ
to the mannoꝝ which the Church had gotten, and so

kept theirs still. The same did the Bishops also, till at the last, and now of late, some Bishops (to make a péece of money) manumitted theirs, partly for argent, partly for flanders, that they seemed more cruell than the temporaltie: after the Monasteries coming into temporall mens handes, haue been occasion that now they bee almost all manumitted. The most part of bondmen when they were, yet were not vsed with vs so cruelly nor in that sort as the bondmen at the Romane ciuill law, as appeareth by their comedies: nor as in Grèce, as appeareth by theirs: but they were suffered to enioy copihold land, to gain & get as other seruants, that now and then their Lords might fleese them, and take a péece of money of them, as in Fraunce the Lordes doe taile them whom they call their subiectes, at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I thinke both in France and England, the change of religion, to a more gentle, humane, and more equall sort, (as the Christian religion, is in respect of the Gentiles,) caused this olde kinde of seruite seruitude and flauerie, to be brought into that moderation, for necessitie, first to villaines regardants, & after to seruitude of landes and tenures, and by little and litle finding out more ciuill and gentle meanes, and more equall to haue that done which in time of heathenesse, seruitude or bondage did, they almost extinguished the whole. For although all persons Christians be brethren by baptisme in Iesus Christ and therefore may appeare equally free, yet some were, and still might be christened being bond and serue, and whom as the baptisme did finde, so it did leaue them, for it changeth not ciuill lawes nor compacts amongst men which be not contrarie to Gods lawes, but rather maintaineth them by obedience.

Which seeing men of good conscience hauing that
scruple

scruple whereof I wrote before, haue by litle and litle found meanes to haue and obtaine the profite of seruitude and bondage which gentilitie did vse, & is vled to this day amongst Christians on the one part, & Turks and Gentiles on the other part, when warre is betwixt them, vpon those whom they take in battaile. Turkes and Gentiles I call them, which vsing not our Lawe the one belæueth in one God, the other in many Gods, of whom they make images. For the lawe of Iewes is well inough knowen, and at this day so far as I can learne, amongst all people Iewes be holden as it were in a common seruitude, and haue no rule nor dominion as their owne propheties doe tell, that they shoulde not haue, after that Christ promised to them, was of them refused: for when they would not acknowledge him, obstinately forsaking their helpe in soule for the life to come, and honoz in this world for the time pzent, not taking the good tidinges, newes, and Euangel brought to them by the great grace of God, and by the promise of the Prophets fructified in vs which be Gentiles, and brought forth this humanitie, gentlenesse, honoz, and godly knowledge which is sene at this pzent. But to returne to the purpose.

This perswasion I say of Christians, not to make nor keepe his brother in Christ, seruite, bonde and vnderling for euer vnto him, as a beast rather than as a man, and the humanitie which the Christiau Religion doth teach, hath engendzed through Realmes (not néere to Turkes and Barbarians) a doubt, a conscience and scruple to haue seruantes and bondmen: yet necessitie on both sides, of the one to haue helpe, on the other to haue seruice, hath kept a figure or fashion therof. So that some would not haue bondmen, but adscripticij glebæ, and villaines regardant to the ground,

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to the intent their seruice might be furnished, and that the countrey being euill, vnholesome, and otherwise barren, should not be desolate. Others afterwards found out the waies and meanes, that not the men, but the land should be bond, and bzing with it such bondage and seruice to him that occupieth it, as to carrie y^e Lords dung vnto the fieldes, to plowe his ground at certaine dayes, sowe, reape, come to his Court, sweare faith vnto him, and in the end to hold the land but by copie of the Lords Court rolle, and at the will of the Lord.

This tenure is called also in our lawe, villaine, bond, or seruite tenure: yet to consider moze deeply, all land, euen that which is called most free land, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receiue the water & filth which falleth from the higher ground, nor such as Iustinian speaketh of, de seruitudinibus prædiorum rusticorum & urbanorum. but the land doth bzing a certaine kinde of seruitude to the possessor. For no man holdeth land simply free in England, but hee or she that holdeth the crowne of England: all others hold their land in fee, that is, vpon a faith or trust, and some seruice to be done to another Lord of a manor, as his superiour, and hee againe of an higher Lord, till it come to the prince, and him that holdeth the crowne.

So that if a man die, and it be found that hee hath land which he holdeth, but of whom no man can tel, this is vnderstood to be holden of the crowne, and in capite, which is much like to knightes seruice, and draweth vnto it three seruices, homage, warde, and marriage: that is, he shal sweare to be his man, and to be true vnto him of whom he holdeth the land: His sonne who holdeth the land after the death of his father, shal be married where it pleaseth the Lord.

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He that holdeth the land most freely of a temporall man (for franke almose and franke marriage hath another cause and nature) holdeth by fealtie onely, which is, hee shall sweare to be true to the Lord, and doe such service as appertaineth for the land which hee holdeth of the Lord.

So that all free land in England is holden in fee, or feodo, which is as much to say, as in fide, or fiducia. That is, in trust and confidence, that he shall be true to the Lord of whom he holdeth it, pay such rents, do such service, and observe such conditions as were annexed to the first donation. Thus all saving the Prince be not veri domini, but rather fiduciarij domini, and possessores.

This is a more likely interpretation then that which Littleton doth put in his booke, who saith that feodum, idem est quod hæreditas, which it doth betoken in no language. This hapneth manie times to them who be of great witte and learning, yet not seene in manie tongues, nor marke not the deduction of words which time doth alter. Fides in Latine (the Goths comming into Italie, and corrupting the language) was turned first into fede, and at this day in Italie they will say in fide, en fede, or ala fe. And some uncunning lawyers that would make a new barbarous Latine word, to betoken land giuen in fide, or as the Italian saith, in fede, or fe made it in feudum, or feodum. The nature of the word appeareth more euident in those which we call to feoff, or feoffees, the one be fiduciarij possessores, or fidei commissarij: the other is, dare in fiduciam, or fidei commissum, or more Latinely, fidei committere.

Littleton did not interpret the word feodum simply, but rather define or describe the nature thereof.

The same Littleton was as much deceiued in withernam, and diuers other old words. This withernam, as
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he interpreteth *vetitum namium*, in what language I know not: whereas in trueth it is in plaine dutch, and in our olde Saxon language, wyther *nempt*, *alterum accipere*, or *vicissim rapere*, a worde that betokeneth that which in barbarous Latine is called *represalia*. When one taking of me a distresse, which in Latine is called *pignus*, or anie other thing, and carrying it away out of the iurisdiction wherein I dwell, I take by order of him that hath iurisdiction, another of him againe or of some other of that iurisdiction, and do bring it into the iurisdiction wherein I dwell, that by equall wrong I may come to haue equall right. The manner of *represalia*, and that we call *withernam*, is not altogether one: but the nature of them both is as I haue described, and the proper signification of the wordes doe not much differ.

But to returne thither where we did digresse: yee see that where the persons be free, and the bodies at full libertie, and maxime *ingenui*, yet by annexing a condition to the land, there is meanes to bring the owners and possessors thereof into a certaine seruitude, or rather libertinitie: That the Tenants beside paying the rent accustomed, shall owe to the Lord a certaine faith, duetie, trust, obedience, and (as we terme it) certaine seruice, as *Libertus*, or *Cliens patrono*: which because it doth not consist in the persons, for the respect in them doth not make them bond, but in the land & occupation therof, it is more properly expressed in calling y^e one tenant, y^e other lord of the fee, then either *libertus* or *cliens* can do the one, or *patronus* the other: for these wordes touch rather the persons, & the office & dutie betweene them than the possessions: but in our case leauing y^e possession & land, all the obligation of seruitude & seruice is gone.

An other kinde of seruitude or bondage is vsed in England for the necessitie thereof, which is called *apprenti-*

pprenticehood. But this is onely by couenant, and for a time, and during the time it is *vera seruitus*. For whatsoeuer the apprentice getteth of his owne labour, or of his maisters occupation or stocke, hee getteth to him whose apprentice he is, he must not lie forth of his maisters dozes, he must not occupie anie stocke of his owne, nor marrie without his maisters licence, and he must doe all seruile offices about the house, and bee obedient to all his maisters commaundementes, and shall suffer such correction as his maister shall thinke meet, and is at his maisters cloathing and nourishing, his maister being bound onely to this which I haue said, and to teach him his occupation, and for that hee serueth, some for seven or eight yeares, some nine or tenne yeares, as the maisters and the friendes of the yong man shall thinke meete, or can agree: altogether (as Polidore hath noted) *quasi pro emptio seruo*: neuerthelesse that neither was the cause of the name Apprentise, neither yet doth the word betoken that which Polidore supposeth, but it is a French word, and betokeneth a learner or scholler.

Apprendre in French is to learne, and Apprentise is as much to say in French (of which tongue we borrowed this worde, and many more other) as *discipulus* in Latine: Likewise hee to whom hee is bound, is not called his Lord, but his maister, as yee would say, his Teacher. And the pactions agreed vpon, be put in wryting, signed and sealed by the parties, and registred for more assurance. Without being such an Apprentice in London, and serving out such a seruitude in the same Citie for the number of yeares agreed vpon, by order of the Citie amongst them, no man being neuer so much borne in London, and of parentes Londoners, is admitted to be a Citizen or free man of London: the like is vled in other great Cities of England

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The sons of freemen of London are also free by birth, according to the custome.

land. Besides apprentices, others be hyred for wages, and be called seruauntes, or seruing men and women throughout the whole realme, which be not in such bondage as apprentices, but serue for the time for daily ministerie, as serui and ancillæ did in the time of gentilitie, and be for other matters in libertie as full free men and women.

But all seruauntes, labourers, & others not married, must serue by the yeare: and if he be in covenant, he may not depart out of his seruice without his masters licēce, and he must giue his maister warning that hee will depart, one quarter of a yeare befoze the terme of y^e yeare expireth, or els hee shall be compelled to serue out another yeare. And if any young man vnmarried be without seruice, hee shalbe compelled to get him a maister, whom he must serue for that yeare, or els he shall be punished with stocks and whipping, as an idle vagabond. And if any man, married or vnmarried, not hauing rent or liuing sufficient to maintaine himselfe, doe liue so idle, he is enquired of, and sometime sent to the gaole, sometime otherwise punished as a sturdie vagabond: so much our policie doth abhorre idlenesse. This is one of y^e chiefe charges of the Iustices of peace in euerie shire. It is taken for vngentleness and dishonour, and a shew of enmitie, if any gentleman do take another gentlemans seruant (although his master hath put him away) without some certificate from his maister, either by word or writing, y^e he hath discharged him of his seruice. That which is spoken of men seruants, the same is also spokē of women seruants. So that all youth that hath not sufficient reuenues to maintaine it selfe, must needes with vs serue, & that after an order as I haue written. Thus necessitie & want of bondmen hath made men to vse free men as bondmen to all seruile seruices: but yet more liberally and freely, and with a more equalitie and moderatē

ration, than in time of gentilitie slaues and bondmen were wont to be vsed, as I haue said before. This first and latter fashon of temporall seruitude, and vppon paction, is vsed in such countreies as haue left off the old accustomed manner of seruauntes, slaues, bondmen, and bondwomen, which was in vse before they had receiued the Christian faith. Some after one sort, and some either more or lesse rigorously, according as the nature of y^e people is enclined, or hath deuised amongst themselves for the necessitie of seruite.

Of the Court which is Spirituall or Ecclesiastical, and in the booke of Law, Court Christian, Curia Christianitatis.

CHAP. II.

THe Archbishops and Bishops haue a certaine peculiar iurisdiction vnto them especially in foure manner of causes: Testamentes and legations, Witches and mortuaries, marriage and adulterie or fornication, and also of such thinges as appertaine to orders amongst themselves and matters concerning religion. For as it doth appeare, our auncestors hauing the commonwealth before ordeined and set in frame, when they did agree to receiue the true and Christian religion, that which was established before, and concerned externe policie (which their Apostles, Doctors, and Preachers did allowe) they helde and kept still with that which they brought in of newe. And those thinges in keeping whereof they made conscience, they committed to them to bee ordered and gouerned as such thinges of which they had no skill, and as to men in whom for the holinesse of their life and good conscience, they had a great and sure confidence. So these matters

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be ordered in their Courtes, and after the fashion and maner of the law ciuill, or rather common, by citation, libell, *contestationem litis*, examination of witnesses priuily, by exceptions, replications apart and in writing, allegations, matters by sentences given in writing, by appellations from one to another as well a *grauamine* as a *sententia definitiva*, and so they haue other names, as Doctors, Advocates, Assessors, Ordinaries, and Commissaries. &c. farre from the maner of our order in the common lawe of England, and from that fashion which I haue shewed you befoze. Wherefoze if I say the Testament is false and forged, I must sue in the spirituall Lawe, so also if I demaund a legacie: but if I sue the Executor or Administrator, which is hee in our Lawe, who is in the ciuill lawe *haeres*, or *bonorum mobilium possessor ab intestato*) for a debt which the dead ought mee, I must sue in the temporall Court. These two Courtes the Temporall and the spirituall, be so diuided, that whosoever sueth for anie thing to Rome or in anie spirituall court for that cause or action which may be pleaded in the temporall Court of the Realme, by an olde lawe of England hee falleth into a *premunire*, that is, hee forfeitteth all his goodes to the Prince, and his bodie to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the Scribe, the Procuroz and Assessor which receiueth & doth maintaine that vsurped pleading, doth incurre the same daunger. Whether the word *premuniri* doth befozen that the authoritie and iurisdiction of the Realme is prouided for befoze, and defended by that Lawe, and therefore it hath that name *premunire* or *premuniri*, or because that by that lawe such an attemptor hath had warning given befoze to him of the daunger into which he falleth by such attempt, and then *premunire* is barbarously witten for *premonire*, *premoniri* (as some men

men haue held opinion) I will not define: the effect is as I haue declared: and the Lawe was first made in king Richard the secondes time, and is the remedie which is vled when the spirituall iurisdiction will goe about to encroach anie thing vpon the tempozal courts. Because this court oꝝ foꝛme which is called *curia christianitatis*, is yet taken as appeareth foꝛ an externe and foꝛraine court, and differeth from the pollicie and manner of gouernment of the Realme, and is an other court (as appeareth by the act and wꝛit of *præmunire*,) than *curia regis aut regine*: yet at this pꝛesent this court as well as others, hath her foꝛce, power, authoritie, rule and iurisdiction, from the royall maiestie, and the crowne of England, and from no other foꝛrain potestate oꝝ power vnder God, which being graunted (as indeed it is true) it may now appeare by some reason that the first statute of *præmunire* wherof I haue spoken, hath now no place in England, seeing there is no pleading *alibi quàm in curia regis ac regine*.

I haue declared summarily as it were in a chart oꝝ mappe, oꝝ as Aristotle termeth it *ὡς ἐν τῷ πλάνῳ* the foꝛme and manner of gouernment of England and the policie thereof, and sette befoꝛe your eies the pꝛincipall pointes wherein it doth differ from the pollicie oꝝ gouernement at this time vled in Fraunce, Italie, Spaine, Germanie and all other Countries, which do follow the ciuill lawe of the Romanes compiled by Iustinian into his pandects and code: not in that soꝛt as Plato made his common-wealth, oꝝ Xenophon his kingdome of Persia, noꝝ as Sir Thomas More his vtopia being fained commonwealths, such as neuer was noꝝ neuer shall be, vaine imaginations, phantasies of Philosophers to occupie the time, and to exercise their wits: but so as England standeth, and is gouerned at this day the xxviii. of March. Anno. 1565. in the vii

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yeare of the raigne and administraction thereof by the most vertuous and noble Quene Elizabeth, daughter to king Henrie the eight, and in the one & fiftith yeare of mine age, when I was ambassadour for her maiestie in the Court of Fraunce, the scepter whereof at that time the noble p^rince and of great hope Charles Maximilian did hold, hauing then raigned foure yeares. So that whether I write true or not, it is easie to be seene with eyes (as a man would say) and felt with handes. Wherefore this being as a p^roiect or table of a common wealth truely laid before you, not fained by putting a case: let vs compare it with commonwealthes, which be at this day in esse, or doe remaine described in true histories, especially in such points wherein the one differeth from the other, to see who hath taken righter, truer, and more commodious way to gouerne the people aswell in warre as in peace. This will be no illiberal occupation for him that is a Philosopher, and hath a delight in disputing, nor vnprofitable for him who hath to doe and hath good will to serue the P^rince and the commonwealth in giuing counsell for the better administraction thereof.

Thomas Smith.

